

No. 13403

United States
Court of Appeals
for the Ninth Circuit

WEST COAST FAST FREIGHT, INC.,
a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California, Southern Division

FILED

SEP 27 1952

No. 13403

United States
Court of Appeals
for the Ninth Circuit

WEST COAST FAST FREIGHT, INC.,
a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California, Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Appeal:	
Certificate of Clerk to Transcript of Record on	15
Notice of	14
Statement of Intended Points on (USCA)...	210
Stipulation and Order that Original Exhibits May be Considered on.....	213
Certificate of Clerk to Transcript of Record on Appeal	15
Information	3
Judgment and Commitment.....	12
Minutes of April 17, 1952—Order Denying Mo- tion for Judgment of Acquittal and Motion to Strike, etc.	10
Names and Addresses of Attorneys.....	1
Notice of Appeal	14
Order that Original Exhibits May be Consid- ered on Appeal, Stipulation and.....	213

Statement of Intended Points on Appeal.....	210
Stipulation and Order that Original Exhibits May be Considered on Appeal.....	213
Transcript of Proceedings	16

Witnesses:

Harrison, William L.

—direct	18, 55
—cross	69
—recalled, cross	84
—redirect	141
—recross	147

Shepherd, I. W.

—direct	180
—cross	207

Strock, Melvin E.

—direct	155
—cross	159
—redirect	169
—recross	171

NAMES AND ADDRESSES OF ATTORNEYS

THEODORE W. RUSSELL, Esq.,

GLANZ & RUSSELL,
639 South Spring Street,
Los Angeles 14, California,
Attorneys for Appellant.

CHAUNCEY TRAMUTOLO, Esq.,
United States Attorney,

C. ELMER COLLETT, Esq.,
Assistant United States Attorney,
San Francisco, California,
Attorneys for Appellee.

In the United States District Court for the
Northern District of California,
Southern Division

No. 33063

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WEST COAST FAST FREIGHT, INC., a corpo-
ration,
Defendant.

INFORMATION

The United States Attorney charges:

Count 1.

On or about the ninth day of September, 1950, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 270 boxes of detonating fuses, by motor vehicle on public highways from Oakland, California, to Seattle, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$771.40, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 2.

On or about the sixteenth day of October, 1950, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including 45 pallets explosive projectile for cannon, by motor vehicle on public highways from Oakland, Calif., to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$1121.22, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 3.

On or about the third day of November, 1950, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 14 boxes of rocket ammunition with empty projectiles, by motor vehicle on public highways from Oakland, California, to Fort Lewis, near Tacoma, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$737.20, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the

Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 4.

On or about the tenth day of November, 1950, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 540 boxes ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Fort Lewis, near Tacoma, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$743.80, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 9.

On or about the seventeenth day of December, 1950, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 543 boxes hand grenades, by motor vehicle on public highways from Oakland, California, to Portland, Oregon, for the Sierra Ordnance Depot,

for compensation, in the amount of \$695.40, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 12.

On or about the seventeenth day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 500 cases ammunition for cannon with explosive projectiles by motor vehicle on public highways from Oakland, Calif., to Fort Lewis, near Tacoma, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$752.40, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 13.

On or about the eighteenth day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did trans-

port a shipment of dangerous explosives, including, 675 boxes ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$786.60, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 14.

On or about the twentieth day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 210 boxes ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$786.60, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 15.

On or about the twenty-sixth day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did,

knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 246 boxes ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$786.60, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 16.

On or about the twenty-seventh day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 1,084 cases ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$786.60, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 17.

On or about the sixth day of May, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 232 boxes rocket ammunition for cannon with empty projectiles, by motor vehicle on public highways from Oakland, California, to Seattle, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$752.40, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 19.

On or about the nineteenth day of April, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and as such carrier, did transport a shipment of dangerous explosives, including, 615 boxes ammunition for cannon with explosive projectiles, by motor vehicle on public highways from Oakland, California, to Pomona, near Yakima, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$786.60, without there being in force with respect to defendant a certificate of public convenience and necessity is-

sued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.S.C. 306(a))

Count 20.

On or about the first day of May, 1951, in the Northern District of California, Southern Division, West Coast Fast Freight, Inc., defendant, did, knowingly and wilfully, engage in an interstate operation on a public highway, as a common carrier by motor vehicle, and, as such carrier, did transport a shipment of dangerous explosives, including, 18 boxes of black powder, by motor vehicle on public highways from Oakland, California, to Seattle, Washington, for the Sierra Ordnance Depot, for compensation, in the amount of \$752.40, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (49 U.C.S. 306(a))

[Endorsed]: Filed Oct. 25, 1951.

United States District Court for the
Northern District of California
Southern Division

At a stated term of the United States District Court for the Northern District of California, Southern Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the seventeenth day of April in the year of our Lord one thousand nine hundred and fifty-two.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

(Order Denying Motion for Judgment of Acquittal and Motion to Strike;

Finding of Guilty on Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20 of Information;

By Stipulation, Ordered Counts 5, 6, 7, 8, 10, 11, 18, 21, 22, 23, 24 and 25 of Information be Dismissed.)

The parties hereto being present as heretofore, the further trial of this case was this day resumed. After further arguments by respective counsel, It Is Ordered that defendant's motion for judgment of acquittal and motion to strike be, and each is hereby, Denied.

* * * *

After arguments by respective counsel, it is the Finding of the Court that the defendant is Guilty as charged in Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20 of the information. Ordered that defendant pay a fine of One Hundred Dollars (\$100.00) on each of said Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20—(Total fine imposed Thirteen Hundred Dollars (\$1300.00)). Ordered that the defendant be granted a five (5) day stay of execution of judgment.

By stipulation, Further Ordered that Counts 5, 6, 7, 8, 10, 11, 18, 21, 22, 23, 24 and 25 of information be dismissed.

* * * * *

United States District Court for the Northern
District of California,
Southern Division

No. 33063

UNITED STATES OF AMERICA

vs.

WEST COAST FAST FREIGHT, INC., a corpo-
ration.

JUDGMENT AND COMMITMENT

On this seventeenth day of April, 1952, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon its plea of Not Guilty (entered by I. W. Shepard, Secretary of the defendant corporation), and a Finding of Guilty of the offense of violations of Title 49, United States Code, Section 306(a)—(Defendant, West Coast Fast Freight, Inc., a corporation, a common carrier by motor vehicle, on or about September 9, 1950, and various dates thereafter, in the Northern District of California, Southern Division, did knowingly and wilfully engage in transportation of property (dangerous explosives, etc.) by motor vehicle in interstate commerce on a public highway for compensation, without a certificate of public convenience and necessity having been issued by the Interstate Commerce Commission authorizing such interstate operations, as charged in

Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19, and 20 of information; and the court having asked the defendant whether it has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby sentenced to pay a fine to the United States of America in the sum of One Hundred Dollars (\$100.00) on each of Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19, and 20 of the information. (13 counts.)

Total fine imposed—One Thousand Three Hundred Dollars (\$1,300.00).

(Information consisting of 25 counts. Counts 5, 6, 7, 8, 10, 11, 18, 21, 22, 23, 24, 25 of information heretofore ordered dismissed.)

(Defendant granted a stay of execution of judgment to April 24, 1952.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Examined by:

/s/ CHARLES ELMER COLLETT,
Assistant U. S. Attorney.

Judgment and Commitment filed and entered this seventeenth day of April, 1952.

C. W. CALBREATH,
Clerk,

/s/ By L. R. PETTIGREW,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: West Coast Fast Freight, Inc., 650 Hanford Street, P. O. Box 3026, Seattle 14, Washington.

Name and address of appellant's attorney: Glanz & Russell, 639 South Spring Street, Los Angeles 14, California, MAAdison 9-1134.

Offense: All counts of the Information (Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20) charge the defendant with knowingly and wilfully engaging in interstate operations on a public highway, as a common carrier by motor vehicle in the transportation of dangerous explosives for compensation without there being in force with respect to the defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations (49 U.S.C. 306(a)).

Statement of Judgment: Defendant was adjudged guilty on Counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20 of the Information by the Court on April 17, 1952, and fined the sum of One Hundred Dollars (\$100.00) as to each count (or a total of \$1300.00).

West Coast Fast Freight, Inc., the above-named appellant, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Date: April 24, 1952.

GLANZ & RUSSELL,
/s/ By THEODORE W. RUSSELL,
Appellants' Attorneys.

[Endorsed]: Filed April 25, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal as designated by the attorneys for the Appellant:

Information.

Docket entries.

Minutes of April 17, 1952.

Judgment.

Notice of appeal.

Order for deposit in fine and costs in the registry of the court pending appeal.

Statement of intended points on appeal.

Designation of record on appeal.

Reporter's transcript, April 15, 16, 17, 1952.

WILLIAM L. HARRISON

called as a witness on behalf of the Government, sworn.

The Court: Q. What is your full name, please?

A. William L. Harrison.

Q. And where do you live, Mr. Harrison?

A. I reside in San Mateo now.

Q. And what is your business or occupation?

A. I am attorney with the Interstate Commerce Commission, Bureau of Motor Carriers.

Q. How long have you been so engaged?

A. I have been with the Interstate Commerce Commission, [6] Bureau of Motor Carriers, since 1939. First as a special agent, and since September of 1951 as attorney.

Q. What is the nature of your work during that period?

A. Most of it was investigation work on complaints against Motor carriers operating on public highways.

Mr. Collett: If the Court please, for the record I would like to have the Clerk mark for identification as Plaintiff's Exhibit No. 1 the certificate of public convenience and necessity.

The Court: It may be admitted and marked.

The Clerk: Government's Exhibit 1 marked for identification.

(Whereupon certificate identified above was marked Government's Exhibit No. 1 for identification only.)

(Testimony of William L. Harrison.)

Mr. Collett: And the application for change or extension of operations as Government's No. 2.

The Clerk: Government's Exhibit 2 marked for identification.

(Whereupon application identification above was marked Government's Exhibit No. 2 for identification only.)

Mr. Russell: You are not——?

Mr. Collett: For identification.

Mr. Russell: I see.

Mr. Collett: And with the exception of the cover page here, which is simply for convenience, the group of documents [7] that is contained in each one of these separate groups, as next in order for identification. This pertains to each one of the 20 counts.

The Court: Let it be admitted and marked for purposes of identification.

The Clerk: Each of these marked as a different number?

Mr. Collett: Yes, as a different number, because they all pertain to different counts.

The Clerk: I will announce the numbers later.

Direct Examination

Mr. Collett: Q. Mr. Harrison, what is your official capacity with the Interstate Commerce Commission?

A. At the present time I am attorney for the Interstate Commerce Commission and have been since September of 1951. Prior to that time for

(Testimony of William L. Harrison.)

approximately 12 years I was special agent engaged in investigation work.

Q. Engaged in investigation work. Now as part of the performance of your official duties, did you personally investigate the matter which is charged in the information pertaining to the violation of the authority in the information that is before this Court at this time? A. Yes, I did.

Q. Are you familiar with the record of the Interstate Commerce Commission at Washington, D. C., as to the applications that have been made by this defendant? [8]

A. Yes, I am familiar with them.

Q. I will show you Government's Exhibit No. 1 for identification and I will ask you what that is, if you will identify it, please?

A. I have examined this document, and it is a certified copy, certified by the Secretary of the Interstate Commerce Commission, and it consists of all of the present operating authority held by West Coast Fast Freight, Inc.

Q. Is that likewise the authority during the period from September the 1st, 1950 to and including May the 6th of 1951? A. Yes.

Mr. Collett: I will ask that it be admitted as Plaintiff's Exhibit No. 1 in evidence.

Mr. Russell: We have no objection.

The Court: It may be admitted and marked.

The Clerk: Plaintiff's Exhibit No. 1 heretofore marked for identification, now in evidence.

(Whereupon Government's Exhibit No. 1 for identification only was received in evidence.)

(Testimony of William L. Harrison.)

Mr. Collett: Q. I will show you Government's Exhibit for identification No. 2 and ask you to identify that document.

A. I might say that Exhibit No. 1, which consists of the defendant's operating rights, is referred to in Commission [9] language as Docket No. 55905. That is the number that is applied to their operating authority.

This document is numbered Docket No. 55905 sub 34. This is an application for extension of the defendant's operating authority. The sub 34 indicates that they have been—there have been some 33 other changes in the docket prior to this time, which are incorporated in Exhibit 1.

No. 34 is an application filed by the defendant on January the 9th of 1951, wherein the defendant applied for authority to extend its operating authority to include the transportation of explosives and all other dangerous explosives.

Q. Now calling your attention in that document—well, first—strike that.

Mr. Collett: I will ask that be admitted into evidence as Plaintiff's Exhibit No. 2.

Mr. Russell: I wonder if I might have the opportunity of examining it for a moment?

The Court: Certainly.

Mr. Collett: Surely. I am sorry; I thought you had.

Mr. Russell: I had looked at it, I just want to check one thing. Might I have just a moment, Your Honor?

(Conversation between Messrs. Collett and Russell out of hearing of the Reporter.)

(Testimony of William L. Harrison.)

Mr. Collett: There is no question, if the Court please— [10] counsel is calling my attention, I have the entire record of this matter before the Interstate Commerce Commission, which is available to counsel to be utilized in any manner that he sees fit. He calls my attention to the fact that the original application bears the stamp on here of October the 25th, 1950. As to the matters pertaining to the record before the Interstate Commerce Commission, the record is here. I would not—unless it is necessary, because this is the property of the Interstate Commerce Commission at Washington—

The Court: It is available to counsel?

Mr. Russell: Yes, I understand. I thought perhaps we could obviate the objection to the document, if we might have the understanding that the application itself was originally filed October 24, 1950.

The Court: So stipulated?

Mr. Collett: So stipulated.

The Court: Let the record so show.

Mr. Collett: That whatever—

Mr. Russell: That because of certain terminology used therein, a request for clarification was made by the Commission upon the applicant, that that clarification, I should say that pending the receipt of that, an order was entered by the Commission dismissing because of a lack of clarity, which, when it was cleared up, January 9th, 1951, reinstated the application. [11]

(Testimony of William L. Harrison.)

Mr. Collett: That the order of dismissal is on the 21st day of December, 1950?

The Court: And it was reinstated when?

Mr. Russell: It was accepted without a formal order of reinstatement, but upon the filing of an informal letter of amendment on January 9, 1951, I believe is the date.

The Court: So stipulated?

Mr. Collett: So stipulated.

The Court: Let the record so show.

Mr. Russell: And I would like to ask that it be further stipulated that a petition for reconsideration of the decision of the Commission has been filed by the applicant, I believe on February 22nd.

Mr. Collett: February the 25th.

Mr. Russell: 1952.

Mr. Collett: '52.

Mr. Russell: And that that motion or petition is pending and undetermined at the time of this hearing.

Mr. Collett: So stipulated.

The Court: Let the record so show.

Mr. Russell: With that exception, I have no objection to that document.

The Court: Let it be admitted and marked next in order.

The Clerk: Government's Exhibit 2, heretofore marked for identification, now in evidence. [12]

(Whereupon Government's Exhibit No. 2 for identification only was received in evidence.)

(Testimony of William L. Harrison.)

The Court: Is there any correction in that statement you wish to make?

The Witness: No, that is correct, Your Honor.

The Court: All right.

Mr. Collett: At this time, if the Court please, I will also read into the record the document clarifying the application, which counsel for the defendant has just referred to, which bears the date of January the 4th, 1951, over the stationery of William B. Adams, Pacific Building, Portland 4, Oregon, and addressed to Mr. W. Y. Blanding, director, Interstate Commerce Commission, Bureau of Motor Carriers, Washington 25, D. C.

“Re Docket MC 55905 sub 34, West Coast Fast Freight, Inc.

“Dear Sir: Confirming telephone conversation it is requested that the above application be amended to read as follows:

“‘Explosives of all types, including dangerous explosives in connection with presently authorized routes and territories in the states of California, Oregon, Washington, Idaho and Montana.’

“The purpose of the application is to add explosives as a commodity wherever explosives as [13] a commodity is not specified or included in descriptions of presently authorized operating authority. No duplication of authority is requested, nor is any broadening of points of service or of territories of service requested, except as to the addition of the commodity explosives.

“I certify that I have this date served a copy

(Testimony of William L. Harrison.)

of this letter upon all known existing carriers, including carriers listed in the application, and upon the regulatory bodies of the several states involved.

“Very truly yours,

“William B. Adams.”

Counsel, for the record, William B. Adams is an attorney representing the defendant in this action before the Interstate Commerce Commission?

Mr. Russell: That is correct; we so stipulate.

The Court: Let the record so show.

The Clerk: Government's Exhibits 3 through 22, inclusive marked for identification.

(Whereupon documents referred to on page 8, above, were marked Government's Exhibits 3 through 22 for identification only.) [14]

* * * * *

Mr. Collett: Q. Mr. Harrison, calling your attention to the portion that I just read, I will ask you to read that, and what is the significance of the “without restriction” in that provision?

Mr. Russell: To which I am going to object on the grounds that it calls for a conclusion of the witness without any proper foundation being laid to show that the witness is qualified to give us an expert opinion as to the meaning of the term used in the language of the certificate.

The Court: The objection will be sustained; you will have to lay your foundation first.

Mr. Collett: Q. Mr. Harrison, you first went into the service with the Interstate Commerce Commission when? A. In January of 1940.

(Testimony of William L. Harrison.)

Q. And what was the nature of your duties at that time?

A. I was employed as a special agent.

Q. To investigate what?

A. Investigating complaints and violations of the Motor Carrier Act, as it was known at that time, before the Transportation Act of 1940 was changed. It is known as Part 2 of the Interstate Commerce Act now, pertaining only to motor carrier operations.

Q. And how long did you continue in that work?

A. Until September of 1951, with the exception of a couple of years I was in the service.

Q. And during the course of that time, did your work call for you to be familiar with all of the provisions of the Interstate Commerce Act?

A. Generally so, yes.

Q. And pertaining to the action of the Commission in the provision or prescription of various authorities determining the operating authority of various companies and application made therefor?

A. That's correct.

Q. Since 1950, when you terminated your activity as an investigator, what has been your employment?

A. I have been serving as attorney for the Bureau of Motor Carriers.

Q. And what has been the extent of your duties as an attorney?

A. It is the review of investigation reports and the preparation of reports to the Commission with

(Testimony of William L. Harrison.)

respect to proposed prosecutions and settlement of matters of a legal nature.

Q. And has that included the examination of all investigative reports pertaining to all types of violations pertaining to the motor carriers?

A. That's correct.

Q. And your work has been exclusively as to motor carriers, [20] has it, during this period?

A. That is correct.

Mr. Collett: Well, I will renew the question at this time.

Mr. Collett: Q. Calling your attention to Sheet No. 5, the portion which I last read, and which I will again call to your attention, at the top of the page, services authorized to and from all intermediate points north of Sacramento, on the above-described highways between Los Angeles, California, and Portland, Oregon; between Davis Junction, California, and Red Bluff, California; and between Junction City, Oregon, and Portland, Oregon, without restriction—what is the meaning of the provision therein, “without restrictions”?

Mr. Russell: To which I would still like, if the Court please, to interpose the objection that there has been no proper foundation laid, and in view of the statements, I would like to specify more particularly what I have in my mind, that there is nothing shown in the foundation laid with respect to the experience of this witness to show that he has ever participated in the portion of the Commission's functions and which the designation and

(Testimony of William L. Harrison.)

use of terms in certificates, of which that is a part, and that there is no showing that he has ever been called upon to act in a semi-judicial capacity on behalf of the Commission, where he has been called upon, or under his duties has formally interpreted [21] what the meaning of the certificate is.

The Court: You may ask him whether or not he has.

Mr. Collett: Q. You have heard the objection of counsel. Have you had the experience that has been indicated by that objection?

A. Well, necessarily in the conduct of my duties I have been required to read, review and analyze certificates. That is one of the first things that we must do in order to know where we stand before we can start an investigation, and I have read and studied many of them, together with many decisions of the Commission in the interpretation of certificates. Naturally during that period of time I feel that I have a reasonably legal understanding of what the certificate means and what the Commission intended that it should mean. I have not sat as an examiner, however, in any administrative proceeding. That is a separate and entirely different function from the one which I have performed.

The Court: Is there any other person in your organization who could meet this test that is confronting the Court now?

The Witness: Well, we do have examiners within—

The Court: Are they more familiar?

(Testimony of William L. Harrison.)

The Witness: Not necessarily. I would say from the standpoint of interpretation of a certificate, that is.

The Court: My own thought goes to the weight of the testimony. [22]

Mr. Russell: Well, I had posed the matter, Your Honor, because in this type of proceeding it is my understanding that there is a section known as the section of certificates, whose primary function is to describe these documents, and also that the matter of formal interpretation of the meaning of language is delegated to others, who are brought under the provisions of the Administrative Procedure Act. where they deal after formal proceeding and discussion and so forth, with respect to interpretations. It strikes me that—I won't urge my objection further, but submit the objection, that that is the only type of person who should be able to advise us what a certificate means.

The Court: Under the circumstances here, I shall say that under the rule, it will go to the weight of the testimony. That won't preclude you from presenting testimony to rebut any testimony that this witness may give. All right, let the record so show. The objection will be overruled.

The Witness: May I see this?

Mr. Collett: Q. Yes. (Handing to witness.)

Mr. Russell: If the Court please, I want it clearly understood I am not trying to further argue the ruling with respect to this matter, but in one sense, the testimony which the witness is purporting

(Testimony of William L. Harrison.)

now to give also relates to this matter which I indicated goes to the basic defense. I would prefer to pose that phase of the objection, if that is [23] what it is, when it is pointed to the direct matter in issue, rather than to this point; just so that it won't be understood that I had waived or stepped back, and that the matter is still open.

The Court: Let the record disclose there is a running objection to this line of testimony. Counsel has just indicated that.

Mr. Collett: I understand the objection of counsel, if the Court please, as going to be specifically related to the term "dangerous explosives."

The Court: Yes.

Mr. Collett: Yes. Well that matter we will meet when it arises.

The Court: And your objection is noted. I will allow the testimony to go in subject to your motion to strike.

Mr. Russell: Very well, with that understanding.

The Witness: (Answer) This particular provision which you have reference to now pertains to the service to intermediate points on the route between Los Angeles, California, and Portland, Oregon. The wordage of the certificate shows that there is some restriction to the service of intermediate points on northbound traffic and some on southbound traffic, and within certain designated areas within that route there are not restrictions, that they can handle traffic both ways. The primary restric-

(Testimony of William L. Harrison.)

tion on the commodity, however, retains [24] its identity in the reciting part of the authority, where it says, "general commodities, except those of unusual value and except dangerous explosives." Those are restricted in any event.

The Court: We will take a recess.

(Recess.)

The Clerk: Government Exhibits 23 and 24 marked for identification.

(Whereupon documents above referred to were marked Government Exhibits Nos. 23 and 24 for identification only.)

Mr. Collett: If the Court please, to assist the Court in visualizing the routes, I have obtained from the defendant a portion of the western territory of the United States which is marked on the red lines the areas, the highways over which they operate, and I will ask that be introduced in evidence.

Mr. Russell: No objection.

The Court: Admitted, and marked.

The Clerk: Government Exhibit 25 admitted and filed in evidence.

Mr. Collett: Also the following stipulation, if the Court please, that the term "except dangerous explosives" which we have referred to now several times that is contained in the operating authority, that the term "except dangerous explosives" is contained in that portion of the certificates which de-

(Testimony of William L. Harrison.)

scribes the operating authority from Oakland, [25] California, to Tacoma, Washington.

(Whereupon the western territory statement referred to above was received in evidence and marked Government's Exhibit No. 25.)

Mr. Russell: We are willing to so stipulate.

The Court: The record will so show.

Mr. Collett: I will read it again, if there is any doubt. That the term "except dangerous explosives" is contained in that portion of the certificate which describes the operating authority from Oakland, California, to Tacoma, Washington.

The Court: What does that spell out?

Mr. Collett: If the Court please, we are endeavoring to present to the Court that any transport over the area from Oakland, California, to Tacoma, Washington, as related to the "except dangerous explosives," if that is a restriction, that it applies to any shipment which went over those routes.

Mr. Russell: Perhaps we are saying the same thing. It is our understanding of this that these portions of exhibit 1 which undertakes to describe the operating authority authorizing the defendant to traverse the highways between Oakland and Tacoma contained in it the words "except dangerous explosives."

The Court: "Except dangerous explosives"—very well.

Mr. Collett: Q. Mr. Harrison, did you personally examine the records and books of the defend-

(Testimony of William L. Harrison.)

ant as pertaining [26] to the operations which were involved in the information? A. I did.

Q. Which is now before this Court?

A. I did.

Q. I show you Government Exhibit 3 for identification, which contains three separate documents (handing to witness). Would you identify those documents?

The Court: What are they?

A. These documents are what is known in the industry as freight bills.

According to the regulations, every carrier must execute a receipt or freight bill or some instrument which indicates the transportation being performed.

It must show the point of origin and the shipper, the point of destination and the consignee, the date, a description of the commodity transported, the rate, and the transportation charges.

That is substantially what each carrier must issue.

This particular exhibit is a freight bill, which happens to be a delivery copy of a freight bill. The carrier makes several copies of these bills for their own convenience but they use one copy generally for the consignee's signature as proof of delivery.

The Court: No objection to the copy?

Mr. Russell: No, so far as the fact that it is a copy. [27] I do have an objection to the document.

A. This document was examined by me in the office of West Coast Fast Freight in Seattle, Wash-

(Testimony of William L. Harrison.)

ington, which is their domicile, and it was photostated by employees of West Coast at my request.

This particular document shows the transportation of—

Mr. Russell: Just a moment. I would like to interpose an objection and say that this proposed testimony is not responsive in that the document would be the best evidence as to what it does reflect, and ask that the witness should not read from it prior to the time, since I have an objection to the document itself. A. This freight bill—

The Court: He may read the freight bill. No objection to that, is there?

Mr. Russell: Well, yes. That is what I have objection to. I have an objection to the admissibility of the document on the issues of the case, which I propose to interpose when the document is formally offered.

Mr. Collett: Well, if the Court please, in order to facilitate the objection, at this time we will identify the other two documents, I will offer them into evidence, and he can make his objection.

The Court: Very well.

Mr. Collett: Q. Would you identify the other two [28] documents attached thereto?

A. Well, this particular movement from origin to destination was beyond the operating authority of the defendant, which is a point in issue. It was turned over to a beyond carrier and delivered.

The Court: Same shipment?

A. The same shipment.

(Testimony of William L. Harrison.)

Mr. Russell: I would like to make a motion to strike, if the Court please, the statement of the witness as nonresponsive to the question and it is immaterial to the proceedings, and no foundation laid that he knows it was transported beyond. I think it is immaterial.

The Court: Do you know yourself, or only from those documents?

A. From the document and from my interview with Mr. Gottstein, who is the Government bill of lading clerk for the defendant, and he verified that this shipment went beyond, and I personally did check that matter because I wanted to clarify whether this beyond carrier had authority to transport dangerous explosives.

Mr. Collett: Q. And the third document.

A. That is a correction—

The Court: Let the record show the objection will be overruled. I will allow this subject to your motion to strike.

A. This is a correction bill. The freight charges originally [29] as contained on the face of the bill were not correct, and a correction bill was issued. These three documents were attached together and were furnished me by the defendant attached as they are here.

Mr. Collett: Q. And are those photostatic copies? A. Yes, they are.

Q. They were made by you or at your request from the original documents which you obtained from the files of the defendant, is that correct?

(Testimony of William L. Harrison.)

A. They were made by an employee of the West Coast at my request.

Mr. Collett: I offer them into evidence, if the Court please.

Mr. Russell: If the Court please, I have an objection to the admissibility of the documents, and I am prepared to argue the matter with reference to certain cases. I feel it is quite material to the case and I would like to be heard on them if I may.

I would like to state first to the Court that we have here in a sense a rather peculiar position. The matter has not been developed, and my objection in part goes to the failure of the foundation, not in the sense of the validity of the copy but on a more basic matter.

We have a rather peculiar situation, in that the merchandise being transported by the defendant, as I think it [30] will appear in all or substantially all of the counts of the complaint, moved under seal of the United States Government and that access to the lading was not available to the defendant at the time it moved the freight or at the time that it prepared the documents of which Exhibit 3 are a specimen.

The Court: "Under seal"—I don't follow that.

Mr. Russell: The physical vehicle when it moves from a Government installation is sealed with a metal seal which cannot be removed without destroying the seal, and when it moves for the United States Government, as these did, the Government seals it at point of origin with Government employ-

(Testimony of William L. Harrison.)

ees and when it arrives at its destination they must be the ones to break the seal. So that while the property is in the custody of the defendant, it has no way of knowing nor can it know what the commodity is that is inside of the vehicle, which is its vehicle.

I would like to call the Court's attention to the case of *Reinke vs. The United States* in the Circuit Court of Appeals of the Missouri Area in 278 Fed at page 724, wherein the defendant was charged in a prosecution of larceny from a railroad box car of certain automobile tires, in interstate commerce. The Government undertook to do much as the Government has done here, to call a representative of the railroad company—in that instance to identify the shipping documents [31] prepared by it, by the railway, for the transportation of the merchandise. The documents were offered by a witness other than the witness or the person who actually prepared these documents. Over the objection of the defendant they were admitted in the trial court. They included the bill of lading and certain other freight bill documents. The Court held on appeal that there was no proper foundation laid for receiving those papers in evidence, that they were clearly hearsay on the issue of what the contents of the vehicle were and on the issue of the fact of its interstate transportation—but more particularly on the issue of the contents of the vehicle itself.

I would like to also call to the attention of the Court the case of *Ellis vs. The United States* in the

(Testimony of William L. Harrison.)

Eighth Circuit Court of Appeals, appearing in 57 Fed 2nd at 502, a 1932 case, in which the defendant was charged with unlawfully breaking the seal of a railroad car and entering it with intent to commit larceny. In that instance the Government went further than has been done as the foundation for these documents by calling specific persons who could testify to the various factors or facts with respect to loading and so forth, and they offered a waybill, which is the railroad document, as the Court may be familiar, which the railroad prepares to act as the control document on the movement of the car through the course of the rail lines movement. [32]

The waybill was received by the trial court without restriction as to its purpose. In the Circuit Court of Appeal the ultimate conviction was affirmed basically upon the ground that the specific direct evidence had been presented as to the movement of the goods into the car and as to the movement along the line and indicated that the waybill might have some probative value in the proceeding simply as an explanation of handling by the rail line. But with respect to its admission as to proving the fact of contents, the Court said:

“As to admission of the waybill, it may be said that if it were necessary to prove the cigarettes came from Winston-Salem to Fort Smith”—

I might there interpolate by saying that there were

(Testimony of William L. Harrison.)

three points at which the location of the goods were fixed, Winston-Salem, Fort Smith and the ultimate destination of Fort Gibson, Oklahoma. This waybill dealt with the movement from Winston-Salem to Fort Smith, the intermediate point.

“—it may be said that if it were necessary to prove the cigarettes came from Winston-Salem to Fort Smith, it may be doubted whether the waybill by itself was competent evidence of the fact or whether there was sufficient proof in the record of that fact, that point having been directly raised in the trial court—” [33] citing

the Reinke case, or however it may be pronounced, that I have just referred to.

Continuing, the Court said,

“It may be said that there was a failure of proof in that the indictment alleged that the Interstate shipment was from Winston-Salem to Fort Gibson, Oklahoma, but no competent evidence showing the shipment to have originated at the point alleged.”

Then they held that the failure to prove the movement between Winston-Salem and Fort Smith was immaterial because they had proved by direct testimony from Fort Smith on to Fort Gibson, which was itself an interstate movement, and that the goods were present in the car at Fort Smith, so that the actual breaking took place some place beyond that point. But I think the case is significant and does support the objection which we make here,

(Testimony of William L. Harrison.)

that the documents are hearsay and that they are not the best evidence of the fact with respect to the character of the transportation.

In making that objection I am fully conscious of the fact that in this instance, as distinguished from the two cases which I have cited, the document purports to be a document of the defendant itself, and that is why I opened my comment with the statement that we have a peculiar situation, to wit: That we are compelled to describe something in a shipping document, the exact knowledge of the contents of [34] which we do not have, and I think under those circumstances there is the further ground of no proper foundation laid to bring home to the defendant the fact of knowledge which would constitute this admission by the defendant of the fact of the contents of the trucks, and so I would like to interpose my objection on the ground that it is hearsay, the ground that no proper foundation has been laid, in that there has been no showing of the contents of the vehicle by a separate and independent evidence, and upon the further ground that there has been no proper foundation laid to show any necessary knowledge, or the necessary knowledge to this defendant that the contents of the box were as they may be described in the freight bill.

Mr. Collett: Well, if the Court please, the matter which is presented here seems to me to be the ultimate fact which the defendant by its own act has described the contents, the matter which they

(Testimony of William L. Harrison.)

purported to ship, giving all the data and information pertaining to the shipment, and bears the receipt of having been paid for that particular shipment.

The matter that counsel refers to, as to what the actual contents of the particular sealed truck may have been, I don't think is material as far as this particular, in that——

The Court: Knowledge is important.

Mr. Collett: Well, they have themselves described the goods that they shipped. [35]

The Court: Read the document.

Mr. Collett: It says 60 boxes of percussion caps, 270 boxes detonating fuses, 330 explosive placard applied.

The Court: Does that bring knowledge home to the defendant?

Mr. Russell: It is the contention, if the Court please, that it does not, because the information, as a matter of fact, which is contained upon this document, is in turn secured from other documents and cannot be secured from the contents of the vehicle itself.

I might point out that my objection is, I believe, more than a technical one to the evidence, because of my practical experience with carriers handling government freight in the last war. I knew it to be a fact that at times after the war is over the general accounting office seeks to recover charges from the defendant on the ground that what was described in their freight bill was not the goods

(Testimony of William L. Harrison.)

which moved when it moved under seal, and then say to the carrier: You must now pay us back a part of the freight charges which we paid you because we did not ship in that truck what your freight bill shows we did ship.

And I say, I recognize we have an unusual situation, that the words which are used on this freight bill are nothing more or less than a copy of words taken from a bill of lading which in turn was prepared by someone else, and that because [36] the vehicles were sealed we had no power to check, and that this was simply a document so far as it applies to a sealed truck movement, is simply a written memorandum to implement the onward movement of that vehicle, whatever its contents may be, and does not serve the purpose of a freight bill in the ordinary case where the carrier will have the goods tendered, with the goods in his possession, and subject to observation, and then cuts a document to say this is what it is.

Mr. Collett: Well, if the Court please, the ultimate fact which counsel discloses is that the company has charged itself in issuing this bill with the contents and knowledge of what they were transporting, in which they state they have taken under transport 60 boxes of percussion caps and 270 boxes of detonating fuses.

Now, they have even received payment for the transportation of those goods. That is the ultimate fact. The origination, the manner, the course over which the goods were shipped are disclosed.

(Testimony of William L. Harrison.)

They in the face of what is stated upon their own bill which they issued at the time they took possession, they have proceeded to transport this shipment, in the face of what their operating authority may actually be, which brings us again to the question of "except dangerous explosives" and will ultimately pose the question for this Court as to [37] whether or not the 60 boxes of percussion caps and the 270 boxes of detonating fuses are within "Explosive A" and "Explosive B" in accordance with the Tariff and the Regulations, but the ultimate fact is that they accepted the shipment, they issued their own bill, they described the contents, and proceeded to ship over the route, that they did ship it. It seems to me that is absolutely the ultimate fact before this Court.

Mr. Russell: If the Court please, I think perhaps I can answer counsel's argument by asking a question. Assuming, as I believe to be the fact, that the vehicle itself was closed, and the defendant had no opportunity to see it at all, how can any statement of the defendant be taken as proof of what there was in the box? That is the basis, the primary basis of my objection, that that is hearsay testimony to establish the contents of the vehicle, and where that evidence alone is all that is offered, I submit the authority which I have cited from the Reinke case, which is the only one I can find where we are posed with actually this issue—this document and this document alone is offered to prove what was in the vehicle—that we are accepting hearsay testi-

(Testimony of William L. Harrison.)

mony and in effect not hearsay but a presumption or a guess of the defendant's as to what might be in that vehicle. It didn't even know what was in the vehicle.

The Court: Submitted? [38]

Mr. Collett: Submitted.

The Court: Since the Jury is absent, I will overrule your objection, and I will allow it go in subject to your motion to strike so that you don't lose any of your legal rights.

Mr. Russell: Very well, sir.

Mr. Collett: For the Court's knowledge, the 20 counts that are charged in the information are founded upon similar bills, the source of information. What counsel says with regard to what actually may have been in those wagons, that there was anything other than was indicated by the bill they charged, it seems to me if there is any proof before this Court it would be a matter of defense. That the prima facie case that we have made is to show by their own billing that they have taken under their authority to transport certain goods, and the question then is whether or not they have the authority. In the face of their own statement as to what the contents were, they had proceeded to ship it.

Mr. Collett: What is before the Court now?

Mr. Collett: Before the Court is the entire 20 counts, which will be founded upon similar documents.

The Court: You will have to enter into a stipulation in order to get a proper record.

(Testimony of William L. Harrison.)

Mr. Russell: We might—I think I might be willing, in the interest of saving time, to stipulate that if questions [39] were asked as to the shipping documents related in Exhibits 4 through—or 3 to 22, counsel?

Mr. Collett: Through 22, yes.

Mr. Russell: Respectively, that it might be stipulated that the witness would be asked the same questions and give substantially the same answers, with due regard to the difference in the contents of the specific documents in question.

The Court: Interrogate the witness then.

Mr. Collett: Q. Mr. Harrison, calling your attention to Government's Exhibits for identification 3 through 22, which pertain to each of the counts numbered 1 through 20, calling your attention to the questions which you have been asked pertaining to the Government's Exhibit 3, the first count, and the documents contained therein, if you were asked similar questions as to the entire group of documents under each one of the Exhibits for identification 3 through 22, would your answers be the same?

A. They would be substantially the same. Most of the shipments did not have a beyond movement, but the answers are substantially the same.

Mr. Collett: Now it is understood that your objection runs to each and every one of the counts?

Mr. Russell: In order that the record may be clear, may the record show my objection on the

(Testimony of William L. Harrison.)

ground of hearsay, and [40] no proper foundation laid.

The Court: Let the record so show.

Mr. Collett: Q. Mr. Harrison, calling your attention to Government's Exhibit 4—

Mr. Collett: Then subject to the objection, if the Court please, I will ask that the Government's Exhibits for identification Nos. 3 through 22 be admitted into evidence.

Mr. Russell: May it be understood that they are received subject to our right to make a motion to strike?

The Court: Let the record so show. They may be introduced and marked. They are going in subject to a motion to strike, over the objection of counsel.

The Clerk: Government's Exhibits 3 through 22 introduced in evidence.

(Whereupon Government's Exhibits 3 through 22 for identification only were received in evidence.)

Mr. Collett: Q. Now calling your attention to Government's Exhibit 4, I show you a document which says, "U. S. Government bill of lading, original." Would you identify that document?

A. This is a document which was attached to the delivery receipt on freight bill No. 820934, which delivery receipt was furnished to me in the defendant's office. The document which you refer to is a Government bill of lading and it shows on the face

(Testimony of William L. Harrison.)

thereof the particular commodity which was [41] being transported, the origin of the shipment, the destination of the shipment and the participating carriers.

Q. Now calling your attention to the first document, issued by the defendant, which bears the number 820934 and describes the contents of a particular shipment, are the contents of the shipment indicated therein the same as those indicated in the government bill of lading?

A. It is in the exact verbiage.

The Court: Read it into the record.

The Witness: On the government bill of lading it says, "Description of commodities: 45 pallets (abbreviation pal, p-a-l) of explosive projectile, explosive projectile for cannon."

On the freight bill it says, "45 pallets explosive projectile, explosive projective for cannon."

Mr. Collett: Q. And where was the origination of the shipment as disclosed by the documents?

A. The shipment originated in the Army Ordnance Depot at Herlong, California.

Q. And where from Exhibit 4, is it indicated that the defendant took custody or possession of that shipment for transportation beyond?

A. I can tell from the explanation given by the defendant, the freight bill number is the billing station at Oakland. The freight bill was made at Oakland. The shipment originated [42] at Herlong, California, and was transported by Wells Cargo from Herlong to Oakland.

(Testimony of William L. Harrison.)

The Court: Where is Herlong?

The Witness: It is about 40 miles northwest, right over the California boundary from Reno, Nevada.

The Court: Oh, yes.

A. (continuing) And from Oakland, California—at Oakland it was turned over to the defendant and the defendant transported the shipment to destination.

Mr. Collett: Q. Where was the destination?

A. The destination here was at the army firing center in Pomona, Washington, which is about 13 miles north of Yakima, Washington.

Q. Is there any receipt of payment indicated on the document?

A. This is the delivery receipt, and this bill does not indicate, does not show "Paid" on the face of it, but I verified the payment of each of these movements with Mr. Gottstein at the time I conducted the investigation.

Q. And in each case they had been paid? [43]

A. Yes. * * * * *

Mr. Collett: Q. From the document that you have, Mr. Harrison, can you tell us the point of origin and the route the point at which the defendant took possession and custody for the further shipment of the commodities or goods that are indicated?

A. Well, the point of origin is Herlong, California, and from the document it is indicated that the defendant took possession at Oakland. It is an Oakland billing.

(Testimony of William L. Harrison.)

It was transported from Oakland by the defendant to the Seattle Port of Embarkation. This happens to be that one particular shipment which was turned over to a beyond carrier for final delivery.

Mr. Russell: If the Court please, I would again, in order that we may keep the last——

Mr. Collett: The last portion of the answer may go out.

The Court: The last portion of it may go out.

Mr. Russell: And that is at what point?

The Court: The last portion of it is——?

Mr. Collett: The trans-shipment.

The Court: The trans-shipment. [45]

Mr. Russell: Well, my objection went more deeply than that. I submit that the document is the best evidence as to whether or not he can show how it moved and where it moved, and I doubt very seriously that the witness can from the document tell us anything except that it shows a point of origin and a point of destination, and that's all.

The Court: Q. Is that right?

A. From that particular bill there is no indication on that bill——

Q. You have no other knowledge than that bill, have you?

A. Well, I do from the explanation of the employee, Mr. Gottstein, of the West Coast.

Q. I see.

The Court: Well, you will have to establish that.

Mr. Collett: Q. Well, from this bill, Mr. Harrison, what information do you derive as to the origin

(Testimony of William L. Harrison.)

and the shipment of the commodities indicated therein by the defendant?

A. Well, my answer would be practically the same, because I know from the billing that his is billed at Oakland, and that that is the point where the defendant took possession of the commodity.

The Court: Q. And kept possession up to what point?

A. That is where it was turned over to the defendants.

The Court: I understand.

The Witness: And that he transported it to Seattle, Washington. [46]

The Court: All right.

Mr. Russell: I don't wish to be contentious, if Your Honor please, but I submit that there still has been no foundation laid to show this witness has any information to show the fact of that. He is relying simply on the document, which says, "origin point, Oakland; destination point, Seattle", or X. And that that is all that he can say from this document.

The Court: That is as far as you are going into?

Mr. Collett: That is what I am endeavoring to establish, what the document itself says as to the point of the origination of the shipment and the destination from that document.

The Court: Your objection will be noted and it will be overruled. It is going in subject to the same motion.

Mr. Russell: Very well. Thank you, sir.

(Testimony of William L. Harrison.)

Mr. Collett: Q. Did you have any discussion with any employee of the defendant pertaining to that particular shipment?

A. This particular ship?

Q. Yes.

A. Yes, I discussed each of these.

Q. With whom?

A. With Mr. Gottstein, who was referred to me by Mr. Zweben, who is the secretary-treasurer, I believe. I contacted him first and he turned me over to Mr. Gottstein and directed [47] that Mr. Gottstein aid and assist me in this investigation, and he is the gentleman with whom I talked and discussed these particular shipments with. I had other discussions with other members of the defendant corporation.

The Court: Fix the time as near as you can.

Mr. Collett: Q. Yes.

A. I conducted two investigations in this matter, and the first one was conducted, I believe, in the week of March the 15th, 1951, and the second time I called was right around May the 1st, 1951.

The Court: All right, proceed.

Mr. Collett: Q. And what information did you derive from your discussion pertaining to this particular shipment which is not contained in the certificate, the documents that you have, as Government's Exhibit No. 3?

Mr. Russell: To which I am going to interpose an objection; the question is indefinite and uncertain. He is referring to investigations generally on

(Testimony of William L. Harrison.)

two different occasions. He started out referring to a particular conversation on a particular matter and a particular man.

The Court: He limited it to these documents here, I think.

Mr. Collett: I did.

Mr. Russell: Is that your question, sir?

Mr. Collett: Yes. [48]

A. Well, I examined all shipments of what I considered dangerous explosives, coming from this point of origin, and I discussed all of those shipments. The way in which they were billed,—

The Court: Q. Well, now, you say you discussed them. That is a conclusion; state the conversation as near as you can remember it.

A. Well, I discussed them with Mr. Gottstein, and I asked him if this was another shipment coming from Herlong, and he said yes. Was this another shipment from which Wells Cargo performed the prior movement? And, yes. And I also asked if this is the Oakland billing, if it was where the defendant took possession of the commodity, and the answer was yes. And if the defendant transported it to Seattle.

Q. Transported what?

A. The shipment that shows, the percussion caps and the detonating fuses.

Q. Does he have knowledge of those?

A. Mr. Gottstein?

Q. Yes. A. Only on the face of the billing.

The Court: Proceed.

(Testimony of William L. Harrison.)

A. (continuing) And he replied yes. And I also interrogated him about the beyond movement by the Harbor Oak—or the Oak Harbor Freight Lines and he verified that it moved beyond. [49] I asked him concerning this third copy here and he explained to me that there had been a mis-billing on the original freight bill and that this was the correction copy of the freight bill.

Mr. Collett: Q. Did he make any statment to you that the contents, description of the goods as contained on that bill, were not shipped?

A. No.

Q. What was the date of that shipment?

A. This shipment was September the 7th, 1950.

Q. September the 7th? A. Yes.

Q. On the information, it is charged in Count 1 that on or about the 9th day of September, 1950, that the defendant did, etcetera, ship—it charges particularly two hundred and seventy boxes of detonating fuses, the contents described here—270 boxes of detonating fuses, and gives as the date of the shipment, September the 7th or September the 9th?

Mr. Russell: To which I am going to object on the ground that there has been no proper foundation laid to show that this witness has knowledge of the fact of the date of the shipment. All he has done is to examine certain documents.

The Court: Q. State whether or not you have any knowledge in this regard. [50]

(Testimony of William L. Harrison.)

A. Yes, I do. I examined additional documents to verify the date of shipment.

Q. What documents?

A. The defendant keeps what is known as a trip report, which is a report compiled by each driver on a vehicle during the course of the movement, and that trip report is filed with the defendant and the trip report shows the starting time, it shows what is known in the industry as division points, where they change drivers, and that most of these trip reports showed the arrival time at the Seattle or Tacoma depot.

Mr. Collett: Q. What was the date of shipment as indicated from those reports?

Mr. Russell: To which I am again objecting on the grounds that the witness has, that there has been no proper foundation on laid to show that the witness of his own knowledge had any independent knowledge as to the fact of the date of the shipment. He is relying here on other documents which he is not producing.

The Court: Q. Do you know of your own knowledge the date?

A. I know from the documents in the carriers' records the date that this particular vehicle left Oakland.

The Court: I will allow the testimony to stand, subject to your same motion.

A. (continuing) This vehicle left Oakland—if I may [51] refresh my memory here with this (consulting paper)?

(Testimony of William L. Harrison.)

The Court: Q. What have you there?

A. I made a compilation of the information on the trip reports; each trip report refers to a vehicle number and that is the method in which I could connect up the particular trip report with the particular shipment.

Q. You yourself did that?

A. I did that from the carrier's records, sir.

Q. Indicate in what way you did it.

A. Each manifest—the carrier keeps a manifest and on that manifest there is a description of the commodity, there is also a record of the vehicle number. Each vehicle is numbered, each tractor has a number and each semi-trailer has a number. In connecting up those numbers, I would take those numbers and I would go to the trip report. There is a gentleman by the name of Mr. Castellano, I believe, who is in charge of trip reports. That is his job. I would give him the number of the vehicle and he would go to the trip report records and pull the trip report representing that particular movement.

Q. Where was this?

A. In the Seattle office of the defendant.

Q. When?

A. I did that on both occasions, in March and in May.

The Court: We will take a recess until 2 o'clock.

(Whereupon an adjournment was taken until 2 o'clock p.m. this day.) [52]

Afternoon Session, Tuesday, April 15, 1952
at 2 o'clock p.m.

WILLIAM L. HARRISON

recalled as a witness on behalf of the Government,
previously sworn:

Direct Examination—(resumed)

Mr. Collett: Q. Mr. Harrison, calling your attention again to Government exhibit number 4, would you tell us the date of that shipment?

A. That shipment left Oakland on October 16th.

Q. On October the 16th? A. Yes.

Q. And does it show the shipment of forty-five pallets explosive projectiles for cannons?

A. Yes, sir.

Q. And that is by a motor vehicle of the West Coast, the defendant herein. What is the amount that is indicated that was charged for the transportation?

Mr. Russell: Just a moment. I am going to object to that as being a compound question. It relates to the motor vehicle of the defendants and the virtue of the charges. I have no objection to the witness reciting the statement as shown on the document as to the charge shown, subject to my general objection. The document itself is the best evidence of what it says on its face. But Counsel has injected——

Mr. Collett: I will withdraw the question, if the Court please. I just want to bring out the amount that was indicated from the document, for the record, as was the charge that was made for the transportation of the particular goods indicated on that document.

(Testimony of William L. Harrison.)

The Court: You may answer.

A. The total charge amounted to \$1121.22.

Q. Does the document disclose whether or not it was paid?

A. The document—this document does not disclose that it was paid.

Q. Did you have any conversation with any representative of the defendant in which you were told that was paid? A. Yes.

Q. And that shipment was from what two points by this defendant?

Mr. Russell: To which I am going to object on the grounds there is no proper foundation laid to show that this witness has independent knowledge of that fact. Counsel has heretofore framed his questions as to referring the witness to state what the document purports to reflect in that effect, and I believe that the foundation has not been laid to show that this man has independent knowledge of that document—independent from that document.

Mr. Collett: Q. As disclosed by that document and [54] your conversations with the representatives of the defendant during the course of your investigation.

The Court: What representative?

Mr. Collett: He previously testified—

Q. Who were the individuals or the representative of the defendant with whom you discussed the matter of these documents and these shipments?

A. Well, the particular individuals with whom I discussed the shipments—

(Testimony of William L. Harrison.)

The Court: The shipments now you are speaking about?

A. This particular shipment.

The Court: Yes?

A. —was Dick Gottstein. Gottstein is his last name. I think it was Dick.

The Court: An employee?

A. An employee of the defendant in charge of the Government bill of lading department.

Mr. Collett: Q. And what were the two points, the point of origin, as far as the defendant is concerned, that they took into custody the shipment?

Mr. Russell: To which I am going to object again on the ground the foundation has not been laid, on the basis that it has not been established that Mr. Gottstein is the man who has such information.

The Court: If you know, answer. [55]

A. I know what he told me.

The Court: Who told you?

A. Mr. Gottstein told me, and that these particular numbers referred to the billing station, which is of—which this bill carries, is Oakland, and that is the point where the defendant took possession of the commodity.

Mr. Collett: Q. And it was shipped to where?

A. To Pomona, Washington, which is near Yakima, Washington.

Mr. Russell: Counsel, might I suggest, would it facilitate and avoid the objection and the necessity of interrogation and my objection here, if I

(Testimony of William L. Harrison.)

would stipulate that where the figure 9 appears as the first figure on these documents that it designates the code number for the billing station of Oakland, California of the defendant company? If you are attempting to establish, as far as the document is concerned, I would be willing to stipulate that the code number 9 appearing as the first number in the upper right hand corner separated from the remainder of the numbers by a dash is the code number system adopted by the defendant to indicate that Oakland, California is the billing station.

Mr. Collett: It is agreeable?

The Court: What is that?

Mr. Collett: It is agreeable.

The Court: You so stipulate? [56]

Mr. Collett: Yes, so stipulate.

The Court: Is that the fact?

A. That was my understanding as explained to me by Mr. Gottstein.

Mr. Collett: Q. Calling your attention to Government exhibit 5—

And, if the Court please, the various documents have already been admitted into evidence and I have made the statement to the Court that the various billings that have already been testified to by this witness cover all of the other counts. It is simply a repetition, changes of dates, different shipments made at different dates, but the evidence pertaining to each of the shipments is substantially the same, so that I am now going to proceed to identify by time and the particular commodity that

(Testimony of William L. Harrison.)

were shipped in order to bring before the Court the ultimate problem which I believe will be presented to the Court and that is the particular item which in each count is charged as having been a shipment of dangerous explosives outside of the authority of the defendant—in order to expedite time—the first document—all of the documents are in evidence—and in order to facilitate getting through these various counts to a conclusion.

Q. Calling your attention, Mr. Harrison, to Government exhibit 5, those documents are similar, are they, to the [57] documents you previously examined with regard to the shipments by the defendant? A. Yes.

Q. What is the commodity in that particular exhibit?

A. 14 boxes of rocket ammunition with empty projectiles.

Q. Is that stated as having been shipped?

A. Yes.

Q. On what date?

A. November 3, 1950.

Q. November 3, 1950? A. Yes.

Q. What was the charge as indicated from the document?

A. The freight, total cost of freight charges \$737.20.

Q. Does the exhibit in itself disclose whether or not that amount was paid?

A. This particular exhibit does not.

Q. Did you in the process of your investiga-

(Testimony of William L. Harrison.)

tion receive any other information as to whether or not it was paid, from any representative of the defendant?

A. Yes, I did. From Mr. Gottstein.

Q. What did he state?

A. He stated that it had been paid.

Q. And from your investigation and from the exhibit. Government exhibit No. 5 what was the point of origin insofar as this defendant, the point at which the defendant took [58] custody for shipment? A. Oakland, California.

Q. And to what destination?

A. Fort Lewis, Washington, near Tacoma, Washington.

Q. Now calling your attention to Government exhibit 6 (handing witness). It contains similar documents by which you have previously examined?

A. Yes.

Q. And does that show a shipment of 540 boxes of ammunition for cannon with explosive projectiles? A. Yes.

Q. And the point of origin of the shipment insofar as this defendant is concerned was what?

A. Oakland, California.

Q. And to where?

A. Fort Lewis, Washington.

Q. And the date?

A. November 10, 1950.

Q. And the charges?

A. \$703.80 total charges.

Q. Is that \$703 or \$743? A. \$743.80.

(Testimony of William L. Harrison.)

Q. Does that document indicate whether or not it was paid?

A. Yes, this document does.

Q. It is stamped "paid" is it? [59]

A. It is stamped "cleared transportation clearings,"—I cannot explain what transportation clearings is, but it was verified with Mr. Gottstein. [60]

* * * * *

Mr. Collett: Q. I show you Government exhibit 11. (handing witness). Does it show the shipment of 533 of hand grenades? A. Yes.

Q. The date?

A. On December the 17th, 1950.

Q. 1950—and the charge?

A. Total charges were \$737.20.

Q. The charge \$695.40, does that appear as a charge in those documents? A. Yes.

Q. What is the difference between the \$695.40 and the amount you just gave?

A. There was a correction bill issued on this particular instrument because of the—from the original charge and what was ultimately collected—by virtue of a beyond movement out of Portland, Oregon.

Q. Is there a Government bill of lading included in that group?

A. Yes, there was a Government bill of lading included.

Q. What does the Government bill of lading show?

A. The Government bill of lading is number

(Testimony of William L. Harrison.)

WV 3045982. Shows a shipment of 534 boxes of hand grenades from Herlong, [64] California to Lacota, Oregon—which is out of Portland, Oregon—an ammunition dump in that area.

Q. From Exhibit 11, what was the point of origin, insofar as the defendant was concerned that took custody of this shipment?

A. Oakland, California.

Q. And to where?

A. To Portland, Oregon.

Mr. Russell: Counsel, might ask for purposes of information—

(Thereupon ensued discussion between Counsel.)

Mr. Collett: Q. The correct amount of the shipment is what?

A. 534 boxes of hand grenades.

Q. 534 boxes of hand grenades? A. Yes.

Q. Count number 9 charges 543 boxes of hand grenades. The document itself discloses that there was a shipment of 534, is that correct?

A. That is correct.

Q. The amount of the charge, I don't think I asked that question—what was the amount of the charge of the shipment?

A. Total charges 737.20.

Q. Oh, you did answer that and you explained the difference between 695 and what was paid. [65]

A. Yes.

Mr. Russell: Am I to understand, Counsel, in

(Testimony of William L. Harrison.)

inquiring on these questions that the basis of the witness' answers as to the sources of his information and otherwise is the same as indicated previously unless specifically stated to the contrary, to avoid by objection?

Mr. Collett: Yes. [66]

* * * * *

Q. I show you Government exhibit number 14 (showing witness). Does that show the shipment of 500 cases of ammunition for cannon with explosive projectiles? A. Yes.

Q. Date? A. April 17, 1951. [68]

Q. And what was the amount of the charge?

A. \$752.40.

Q. Was that paid? A. Yes.

Q. What were the two points of shipment?

A. Originated at Oakland, California, with respect to this defendant, and was destined and transported to Fort Lewis, Washington. [69A]

Q. Show you Government's Exhibit 15; that shows a shipment of 675 boxes of ammunition for cannon with explosive projectiles? A. Yes.

Q. For what date? A. April 18th, 1951.

Q. And as far as this defendant is concerned, the shipment was between what two points?

A. Oakland, California and Pomona Siding, Yakima, Washington.

Q. And the charge? A. \$786.60.

Q. And was that paid? A. Yes.

Q. Show you Government's Exhibit 16, Count 14, if the Court please—that shows a shipment of

(Testimony of William L. Harrison.)

210 boxes of ammunition for cannon with explosive projectiles? A. Yes.

Q. And the date?

A. On April the 20th, 1951.

Q. And the charge?

A. \$786.60, total charge.

Q. Was that amount paid? A. Yes.

Q. And the two points of shipment, as far as this defendant was concerned? [70]

Q. Oakland, California to Yakima in Washington.

The Court: For whom, for the Sierra Ordnance Depot?

The Witness: Yes.

The Court: Count 15?

Mr. Collett: Count 15, yes, if the Court please.

Mr. Collett: Q. Government's Exhibit 17, (handing to witness); does that show a shipment of 246 boxes of ammunition for cannon with explosive projectiles? A. Yes.

Q. The date? A. April 26, 1951.

Q. And the charge for the shipment?

A. \$786.60.

Q. Was that amount paid? A. Yes.

Q. And what were the points of origin to which shipped by this defendant?

A. Oakland, California to Yakima, Washington.

Q. That was for the Sierra Ordnance Depot?

A. Yes.

Mr. Russell: In order that the record may be

(Testimony of William L. Harrison.)

clear, counsel, may it be stipulated that the Sierra Ordnance Depot was located at Herlong, California, as distinguished from Oakland?

Mr. Collett: Surely; it was for the Sierra Ordnance Depot. [71] Count 16, if the Court please.

Mr. Collett: Q. Government's Exhibit 18 (handing to witness); does that show the shipment of 1084 cases of ammunition for cannon with explosive projectiles? A. Yes, sir.

Q. Date? A. April 27, 1951.

Q. And the charge? A. \$786.60.

Q. Was that paid? A. Yes.

Q. And the shipment was from what two points insofar as this defendant is concerned?

A. Oakland, California to Yakima, Washington.

Q. Was that likewise for the Sierra Ordnance Depot? A. Yes, sir.

Q. That Sierra Ordnance Depot is located at Herlong, do you know that?

A. Yes, that is true.

Q. Call your attention to Government's Exhibit 19—

The Court: Covering Count what?

Mr. Collett: Count 17.

Mr. Collett: Q. Does that show the shipment of 232 boxes of rocket ammunition for cannon with empty projectiles? A. That's right. [72]

Q. Date? A. On May 6th, 1951.

Q. Charge? A. \$965.20.

Q. Count 17 charges the amount of \$752.40. Is

(Testimony of William L. Harrison.)

the difference between the amount which you have just stated and that amount indicated?

A. The amount which you indicated, \$752.40 was the rate to Seattle. The difference is because this was a beyond movement, and the total charge was \$695.20, because the total charge——

Q. The transportation that was effected by this defendant was from what two points?

A. Oakland, California to Seattle, Washington.

Q. And the \$752.40 covers the charge for that transportation?

A. To Seattle, Washington; yes.

Q. And was that paid? A. Yes.

Q. Is that likewise for the Sierra Ordnance Depot? A. That is true.

Q. All these counts for the Sierra Ordnance Depot? A. Yes. [73]

* * * * *

Q. Call your attention to Government's Exhibit 21——

The Court: What count?

Mr. Collett: Count No. 19.

Mr. Collett: Q. Does that show the shipment of six hundred fifteen boxes of ammunition for cannon with explosive projectiles?

A. That's right.

Q. And the date of the shipment?

A. April 18, 1951. [74]

Q. The count charges the 19th day of April.

A. It moved also on both the 18th and the 19th.

Q. And the amount of that charge?

(Testimony of William L. Harrison.)

A. Is \$786.60.

Q. Is that paid? A. Yes.

Q. And the two points of shipment as far as this defendant is concerned were from where to where?

A. Oakland, California to Yakima, Washington.

Q. And that was likewise for the Sierra Ordnance Depot? A. That's correct.

The Court: Count what?

Mr. Collett: This is Count 20, if the Court please.

Mr. Collett: Q. Government's Exhibit 22 (handing to witness); that shows a shipment of 18 boxes of black powder? A. That's right.

Q. The date? A. On May 1st, or second.

The Court: Did you say 19 or 18?

The Witness: 18.

Mr. Collett: The count, if the Court please?

The Court: No, the black powder.

Mr. Collett: 18 boxes of black powder.

The Court: I thought you said 19.

Mr. Collett: I guess I didn't enunciate clearly.

The Witness: It is 18 here, your Honor.

Mr. Collett: 18 boxes of black powder?

A. That's right.

Q. On the first day of May, 1951, and between what two points as far as this defendant is concerned?

A. Oakland, California and Seattle, Washington?

Q. The charge?

(Testimony of William L. Harrison.)

A. That would be \$752.40, total rated to Seattle.

Q. And what that paid? A. Yes.

Q. That was likewise for the Sierra Ordnance Depot? A. Correct.

* * * * * [76]

Mr. Collett: That leaves fifteen.

The Court: There remains fifteen counts?

Mr. Collett: Fifteen counts, yes. Now I offer in evidence Motor Carriers Explosive and Dangerous Articles Tariff No. 6 and No. 7, from which the suitable and pertinent portions will be read to the Court.

I don't think counsel has any objection to them.

Mr. Russell: No, we have discussed this matter briefly previously, if the Court please. The pertinent matters contained in these two documents are derived from regulations of the Commission contained in the Federal Register. The book, however, in which they appear, which is the only convenient form in which we can have them, is a private publication and there are very minor differences in language, particularly with respect to cross-reference regulations, that I think have no pertinence here. I have no objection to the documents, with the understanding that if any time any [77] particular language becomes a matter of dispute, we might supplement it with the Federal Register as the best record.

The Court: That is agreeable?

Mr. Collett: Yes, indeed.

The Court: It may be admitted in evidence to be

(Testimony of William L. Harrison.)

used by either side for whatever purposes are desired.

The Clerk: Government's Exhibit 23 and 24 for identification are now admitted in evidence.

(Whereupon Government's Exhibits 23 and 24 for identification only were received in evidence.)

Mr. Collett: That is all of Mr. Harrison.

The Court: Just a moment.

Mr. Collett: Excuse me.

The Court: You don't want to shut out counsel?

Mr. Collet: Certainly not.

Cross Examination

Mr. Russell: Q. Mr. Harrison, you mentioned in the course of your direct examination having first contacted, I believe, a Mr. Zweben?

A. That's correct.

Q. Of West Coast Fast Freight. Was he the first person to whom you spoke to direct your inquiry?

A. I can't say definitely. I may have talked with Mr. Roberts, the vice president first; and then been referred to Mr. Zweben. Or the first time I called, possibly Mr. [78] Roberts wasn't there and I saw the next man in the level of importance.

Q. In other words, Mr. Zweben was the man to whom you were referred for the information that you particularly were seeking at that time, is that correct, sir?

A. That is correct.

Q. Mr. Zweben was, was he not, the general au-

(Testimony of William L. Harrison.)

ditor of the company in charge of its books and records?

A. Yes, that is my understanding.

Q. And as I understand it, his office was located at Seattle? A. That is correct.

Q. And Mr. Zweben in turn referred you to Mr. Gottstein?

A. Both Mr. Gottstein and Mr. Castellano, I believe is the gentleman who is in charge of the trip report records.

Q. As I understand it, his participation was simply to furnish you with such trip report records as you might request? Am I correct in that, sir?

A. That is correct.

The Court: Trip report records; what does that mean?

Mr. Russell: Perhaps I can clarify it by some questions.

Mr. Russell: Q. The trip report record is a record of the description of the truck, its drivers, its numbers and the point of its origin and destination, is that not correct, essentially, sir? [79]

A. That is correct, and it serves a pay roll purpose for drivers.

Q. It does not purport to deal as such with the load that is hauled; other records purport to do that? A. That's correct.

Q. Now it is correct, is it not, sir, that Mr. Gottstein was also in the accounting department of the company at Seattle?

A. I can't say that for certain. My understand-

(Testimony of William L. Harrison.)

ing was that I was turned over to him because all of these shipments were on Government bills of lading and I was told by Mr. Zweben, I believe, that Mr. Gottstein was in charge of all bill of lading shipments. Now——

Q. He was a bill of lading clerk or a bill clerk of the company, particularly handling government traffic, isn't that the way it was explained to you?

A. That was my understanding, that's right.

Q. Now your conversations with Mr. Gottstein were at Seattle? A. Yes.

Q. And it is correct, is it not, sir, that Mr. Gottstein at no time ever undertook to advise you that he had any personal knowledge from observation of the equipment, either at Seattle or elsewhere, as to what may have physically been on the equipment, from his own observation? [80]

A. Well, he didn't go any farther than what appeared on the face of the documents.

Q. That is exactly what I am getting at. In other words, such information as Mr. Gottstein gave you was also taken from the documents and perhaps from the familiarity he had with their usage, to interpret them for you, such as indicating what the code number nine meant?

A. That is correct.

Q. So that your information obtained from Mr. Gottstein was basically from the documents which we have here, exhibits 3 through 22 inclusive?

A. That is correct.

Q. I understand also that you made two investi-

(Testimony of William L. Harrison.)

gations of the company? A. That is correct.

Q. They were both made at the offices in Seattle?

A. Yes.

Q. Now I would like to call your attention for a moment to exhibit 7, which is—I should say exhibit 24, particularly to the section or the portion thereof, the sub-numbers, which are the seventy-three series, 73.50 and following, and ask you if it is not true generally, sir, that the language—specific language—contained in the description of commodities and exhibits 3 through 22 conforms with some exactness to the language used in that portion of exhibit number 23? [81] For example, sir, I call your attention to the portion, if I may approach the witness—

The Court: You are now directing his attention to what and from what document?

Mr. Russell: I am directing his attention to exhibit number 23 at page 36.

The Court: Which is what?

Mr. Russell: The description of the regulations as contained—of the Commission, contained in this document.

The Court: Very well.

Mr. Russell: Q. Particularly to 73.54. There is a heading “Ammunition for cannon” you will notice.

The Court: Ammunition for what?

Mr. Russell: For cannon. I mention this merely as being descriptive.

Q. It is generally true, is it not, sir, that the

(Testimony of William L. Harrison.)

language adopted for describing commodities in these specific exhibits 3 through 22 follows, generally speaking, the language of these regulations?

Mr. Collett: Well, are you speaking—an objection, if the Court please. Are you speaking generally or specifically, now? You have mentioned something specifically and then you just asked the question generally. I think the question is ambiguous, perhaps.

Mr. Russell: Well, I was trying to cover it too rapidly, [82] it may be. Withdraw the question.

Mr. Russell: Q. I ask you, sir, if it is not true that certain of the language contained in exhibits 3 through 22 uses the word “Ammunition for cannon” as its basis of description.

Mr. Collett: Well, if the Court please, I will object; I think he might take the language he is referring to and indicate wherein the language may be contained in the tariff. Otherwise, it is ambiguous and a very general statement.

Mr. Russell: Well, if I might have a moment to pull one of these, then, to use as to that.

(Conversation between Messrs. Collett and Russell out of hearing of the reporter.)

Mr. Russell: Q. With reference to the item to which I called your attention before, item numbered 73.54, I believe on page 36; there is contained in that regulation a description, “Ammunition for cannon with explosive projectile,” is there not?

A. Yes, those words are here.

(Testimony of William L. Harrison.)

Q. Yes. And I would like now to ask you, sir, with that example before you—I will strike that question.

Are you generally familiar with the phraseology and terminology used in the various sub-paragraphs in part 73.54 and subsequent, in these regulations? [83]

A. I am not so familiar with that language; I am more familiar with the language used in the classification in the first section of this tariff, section 71.

Q. Perhaps we can solve that. Would you turn to the classification with which you are familiar?

A. This is part 72, the commodity list and classification.

Q. Which undertakes to be a brief list of different items, I mean a brief naming of different items?

A. That is true.

Q. I ask you to check that list and find out whether or not you find the word, for example, "Ammunition for cannon with explosive projectile." A. That is correct.

Q. And generally speaking, if I were to ask you the same questions with respect to each of the commodities which are listed in the information, the terminology would follow essentially that pattern, would it not, sir?

A. It would follow almost verbatim the pattern as classified in the commodity list under part 2 of this tariff.

(Testimony of William L. Harrison.)

The Court: Wait a minute. I am not following clearly. What are you saying there?

The Witness: This is the motor carrier's explosive and dangerous articles, under the tariff. In part 2 they have listed, I would say, practically every conceivable type of explosive and dangerous article, and they have classified [84] them. In respect to explosives, they are classified as to the A type explosive, the B type and the C type period.

The Court: And what are these classified as, these materials we are dealing with here?

The Witness: Those counts 3 through 20, excluding the ones which have been dismissed, are all either A or B.

The Court: That is correct?

Mr. Russell: Yes. I intended to go into that more fully in a few moments.

The Court: All right, pardon me.

Mr. Russell: Q. Now Mr. Harrison, is it not also true that if the description which you have referred to in part 72, as compared with the description in part 73, that there you will find some elaboration of that description, to include a more detailed outlining of what actual items are included there, in most instance? A. That is correct.

The Court: Wait just a moment. What is correct?

The Witness: That these classifications are expanded upon to some extent over in the body of the tariff, because this part of it here pertains to

(Testimony of William L. Harrison.)

shippers and packing instructions and things of that nature.

The Court: I see.

Mr. Russell: Q. Would it not be true, Mr. Harrison, that taking our example, "Ammunition for cannon," that that [85] might be used by the person selecting the language to include, for example, everything from something as small as a 20 millimeter shell up to a 17 inch shell for a major naval rifle?

Mr. Collett: Well, object to that question; it seems to be going far away, to me.

The Court: Q. Do you know?

A. No, I haven't the slightest idea.

Mr. Russell: Q. Do you not know the answer?

A. No.

The Court: Well, I haven't the faintest conception of it; I just wondered if he had.

Mr. Russell: Q. Mr. Harrison, I would like to ask you, sir, is it not true from your own knowledge that from time to time the government may describe an article as something other than what it actually is for security reasons?

Mr. Collett: Well, I will object, if the Court please, that that is immaterial and irrelevant to the matter before this Court.

The Court: Does that enter upon the trial of this case on the merits?

Mr. Russell: What did you say? I am sorry.

The Court: Does that enter the trial of this case on its merits?

Mr. Russell: I only seek to develop, if the Court

(Testimony of William L. Harrison.)

please, [86] further basis for my motion in connection with these particular exhibits, to show it to be a fact, whether it is the fact as to these I frankly do not know, because we have never to this day had access to the product; that it is possible for the Government intentionally and for purposes of security to define an item as Item A when it is something else.

The Court: Well, I will give you a record. Objection overruled, you may answer if you know.

A. Well, the best answer I can give to that is that on some of the bills of lading which I did observe—I didn't observe them all, because they were in the process of accomplishment, which means when they are sent on to be paid. But there is generally stamped on that bill of lading that this commodity is described according to the explosive tariff and that it is packed and crated in compliance with the regulations as contained in this tariff and so named. Now that is all I know.

Mr. Russell: Q. Now in all fairness, sir, if the Government were undertaking to move something of a highly secret character, they might well do that to throw people away from any curiosity, even though the article was not the article in the truck?

Mr. Collett: Objection, if the Court please. I think that is highly argumentative. [87]

The Court: Sustained.

Mr. Russell: All right.

Mr. Russell: Q. Turning to another subject, Mr. Harrison, was it not the fact sir, that at the time of

(Testimony of William L. Harrison.)

both of your inquiries at West Coast Fast Freight, you found them to be cooperative in furnishing you with the information that you asked for?

Q. Would it not be true, sir, that they made no effort, or you saw no effort of any attempt to disguise or conceal any of these things that they had been doing with respect to the transportation of the various shipments involved in the information?

A. No, they did not.

Q. And that would apply also to others that you may have inquired about? A. That is true.

Q. At the time of your investigation, either in March or in May, did you advise or undertake to advise the company of any conclusions that you may have reached as to the propriety or lack of propriety of handling these particular items? A. Yes.

Q. To whom did you talk?

A. I stated my conclusions.

Q. Those were your conclusions?

A. My conclusions. [88]

Q. I notice that you phrase it in that way; do I take it from that, sir, that you felt that you were not qualified to state what the Commission's conclusions might be with respect to that?

Mr. Collett: I object, if the Court please. He has stated his conclusions.

The Court: Let him answer if he knows.

A. Well, just as a matter of policy, I didn't consider and haven't considered that I was in a position to bind the Commission on a matter of this kind, is all.

(Testimony of William L. Harrison.)

Q. You were appearing there to investigate this transportation as a representative of the Commission?
A. That is correct.

The Court: He didn't want to be tried by the Commission himself.

Mr. Russell: Q. If I understand you, sir, correctly, you indicated certain opinions which you clearly evidenced were your own, as to whether this might be proper or improper?

A. That is correct.

Q. Did your knowledge did you ever cause any notice to be given to this carrier after your investigations or either of them had been completed, that the Commission considered this to be an improper transportation?

A. I did not. I reported the facts that I found to my superiors. [89]

Q. And did you make recommendations with respect to them?

A. Yes, I made a recommendation.

Q. To your knowledge, sir, at any time prior to the time that this information was filed was any notice given to the carrier by the Commission or any of its representatives?

A. Not to my knowledge.

Q. With respect to the propriety of lack thereof of handling these?
A. That is correct.

Q. When you made your investigations, did you find out that an application was pending before the Commission, the one which is the subject of Exhibit 2 in this proceeding?
A. That is correct.

(Testimony of William L. Harrison.)

Q. Did you make any inquiry to find out what the nature of that application was?

A. Limited inquiry. I didn't study the application.

Q. Were you advised by any representative of the applicant at the time of the first investigation that a hearing was shortly to be held in connection with it?

Mr. Collett: Oh, I object, if the Court please; I don't see what the materiality of this may be.

Mr. Russell: I think, if the Court please, if I may express it, the obvious purpose of Exhibit 2 as offered by the Government is an attempt to reflect that we had notice or knowledge of the possible deficiency in the certificate, [90] and I am seeking here to develop the full facts with respect to the nature of that application and why it was filed, if this witness does know, to counteract the possible inference from that application that the defendant had knowledge of the deficiencies in its certificate.

The Court: Assume he had no knowledge; then where would we find ourselves?

Mr. Russell: I think, if the Court please, that assuming this witness had no knowledge or assuming that the defendant had no knowledge?

The Court: Assuming this witness—or the defendant.

Mr. Russell: Well, I am not sure that I understand for sure the Court's question. If the defendant had no knowledge I think it would be material on

(Testimony of William L. Harrison.)

the question of the wilfullness of the violation, which is a provision of the statute.

The Court: Yes, I agree with you thus far; but that wouldn't excuse the violation.

Mr. Russell: I think it has to be wilfull and knowing violation.

The Court: Yes.

Mr. Russell: And I think the offer of Exhibit 2 is for the purpose of attempting to establish that it was wilfull and knowing, and I am seeking to bring out from this witness, if he knows, the fact that the application was filed for a different purpose. [91]

The Court: I will give you a record on it. He may answer. Do you understand the question?

The Witness: The only purpose that arose in my mind is just what is on the written record. It was certainly my reaction to the filing of that application to the defendant finally recognizing that it didn't have authority to transport dangerous explosives and it proceeded to seek authority to do so.

Mr. Russell: Q. I notice you said that it was your reaction. Was that conveyed to you by any representative of the defendant? A. No.

Q. Were you ever advised by any representative of the defendant that that application had been filed for the purpose of clarifying in a proper proceeding before the Commission what it might be that the defendant could haul? A. No.

Mr. Collett: Well, I object—

Mr. Russell: Q. Did you ever make any effort

(Testimony of William L. Harrison.)

to examine the transcript of the testimony contained in that proceeding?

Mr. Collett: I will object, if the Court please. This is not material and is posing a burden upon this witness to investigate a transcript.

The Court: Well, since there is an offense charged, I will allow the widest latitude. The jury is absent; proceed. [92] You may answer. I will give him a record on it.

A. Well, as I recall, there wasn't any transcript or hadn't been any hearing had at the time this investigation was made.

Mr. Russell: Q. You are speaking now of the first or the second, sir?

A. Both. Was the hearing held on April 26th, wasn't it?

Q. I believe that is my understanding, sir.

A. Well, I was in the process, about that time; in other words, the record had not been made in the docket at the time. I have since reviewed the transcript.

The Court: Q. Tell me for my own information, how is it that this matter first was called to your attention?

A. This whole proposition?

Q. Yes. This matter that is now pending before this Court; how did that come to your attention?

A. Our safety men were conducting a road check. That is where they go out on borders and stop these vehicles, and they stopped a vehicle operated by the defendant company for examination

(Testimony of William L. Harrison.)

and inspection, and they found that they were transporting what to that inspector was dangerous explosives.

The Court: I don't want you to be bound by that. I just wanted to inquire myself. That was off the record.

Mr. Russell: Yes, sir.

Mr. Russell: Q. Mr. Harrison, I believe you indicated some familiarity with Exhibit No. 23. Is that the [93] document before you?

A. No. 23 is Tariff No. 7.

Q. It is a fact, is it not, sir, that that document undertakes to set forth in some detail regulations prescribed by the Interstate Commerce Commission governing the transportation of the explosives and other dangerous articles, which regulations were issued pursuant to the transportation of the Explosives Act? Is that not correct, sir?

Mr. Collett: Doesn't the document speak for itself?

Mr. Russell: I don't think this will reflect that fact.

A. Well, I don't know as I exactly understand your question. That is a tariff published by a tariff publishing agent, and it is published on behalf of participating carriers. It does include the regulations, generally speaking, as prescribed by the Interstate Commerce Commission, with respect to transportation of explosives by rail, by motor carrier and highway, and by express and water. It also contains instructions to shippers with respect to

(Testimony of William L. Harrison.)

packing, crating, and it is an excellent dissertation and compilation of what the explosive regulations are as published by the carriers who are participating members of that tariff.

Mr. Russell: Counsel, in order that we may avoid any difficulty—this is what was in my mind. I thought we might have some such statement made. Might it now be understood that the portions, at least, of Exhibit 23 which undertake [94] to set forth descriptions of packaging, descriptions of commodities, regulations governing rail carriers, motor carriers and all parts with the possible exception of the statement showing participation of carriers therein, may be deemed to be the same as the regulations themselves? We are now getting into a dispute as to the validity of the document.

The Court: We will take a recess and you gentlemen will have an opportunity to think that over.

(Recess.) [95]

Afternoon Session, Tuesday, April 15, 1952
at 3:30 o'clock p.m.

Cross Examination—(Resumed)

Mr. Russell: Q. Mr. Harrison, I was asking you before the recess questions with respect to Exhibit 23. Would it not be correct, sir, that parts 72 through 78 appearing in pages 5 through 288 of that document set forth in substantially verbatim language the official regulations of the Interstate Commerce Commission with respect to the transportation of explosives and other dangerous articles?

(Testimony of William L. Harrison.)

A. I think that is correct.

Q. So that——

A. The tariff on the cover sheet so states, that it is a publication of the rules and regulations as prescribed by the Interstate Commerce Commission. I have not compared it word for word, but I think that is substantially correct.

Q. Now, sir, that constitutes, does it not, the official designation by the Commission, arising out of a proceeding that has been continuing for some years, of the Commission's definition and rules and regulations with respect to the transportation of explosives by motor carrier, by rail and by other forms of transportation?

Mr. Collett: I object, if the Court please. He has already testified that tariff is a publication by combinations of motor carriers. Now he is speaking about the Interstate [96] Commerce Commission regulations. The Interstate Commerce Commission regulations would be an official publication, would be in accord with the Code Federal Regulations as originally published in the Federal Register and which come according to the last statement embodied in that tariff by those who publish the tariff. My objection runs that that question is not——

The Court: You do not want to limit it to these regulations?

Mr. Collett: Well, no. *International* Commerce Commission does not publish this. The Interstate Commerce Commission does not nor does the Government in any form publish this document.

(Testimony of William L. Harrison.)

The Court: I understand that.

Mr. Russell: Well, in order that we may be clear, this was the matter that I raised just before the recess. It was my understanding in stipulating to the admissibility of this document that one of the purposes, shall I put it in that way, of bringing it in was that this is the only place in which these regulations appear in conveniently published form so that they can be readily used as an exhibit and it was my understanding that in making my stipulation and with my discussions with counsel prior to its offer that we might consider those portions of the documents which are in fact a republication, if you will, [97] of the regulations themselves for the purposes of our interrogation here, with full understanding they had been privately published.

Mr. Collett: That is substantially correct, that what it states on the face of the document, that it is a publication of the regulations, and likewise that it is a publication by the combined group of motor carriers, in which they have established their tariff which regulates their operations. As such necessarily as a matter of law the regulations are determinative and would be determinative. It is a convenient form of presentation, as it stated on the cover sheet in itself.

The Court: I don't understand what the problem that counsel has with regard to the significance of that document as such.

Mr. Collett: My purpose is that I wish to interrogate the witness some with respect to the con-

(Testimony of William L. Harrison.)

tents on the basis that we are talking about the regulations of the Commission and I do not want to be faced with the objection of counsel, after I have finished, that I have not been referring to something which in language is the same in all particulars as the language of the Commission. In other words, if we are going to have a question as to the accuracy of the material contained in Exhibit 23, then I would prefer to address the questions to the witness only after I have been able to [98] get available a copy of the regulations themselves.

I am fully aware, by comparison on my own account, that there are a few places. An example would be that they would say "as provided in this part" and in this document they will say "in part number so and so" or part—and I don't think any of them are material. That is why I was willing to accept the document as a statement of the presently effective regulations as such in lieu of bringing in the Register.

Mr. Collett: If the Court please, I haven't any idea what counsel is anticipating. I have seen no reason so far for any objection but if he thinks that there is going to be objections simply to obstruct the cross examination, there is certainly no such intention. If there is not—

If there is a nonconformity in that publication with the regulations as such, I think we would have a perfect right to object.

But I haven't any idea what counsel is anticipating. In fact, I got a little suspicious that there may

(Testimony of William L. Harrison.)

be something in there that isn't in these regulations.

The Court: I haven't anticipated either, but on the statement that he has made the objection will be overruled. Proceed.

Mr. Russell: Q. Mr. Harrison, you have indicated previously you have some familiarity with that document? [99] A. Yes.

Q. I would like to ask you, sir, are not the rules and regulations as set forth therein, giving due regard for my explanation of minor differences, the regulations which the Commission has provided governing the transportation of explosives and other dangerous articles? A. I think that is correct.

Q. Now, sir, would you take that document—well, let me ask you first. Have you made any investigation to find out whether or not the regulations in the form in which they appear in Exhibit 23 were in effect during the period from September 1, 1950, through May 6, 1951, in substantially their present form?

The Court: According to the dates on there?

Mr. Russell: I appreciate the document is published after that, but the regulations themselves preceded.

Mr. Collett: Then this question is not related to this document. It is related to the actual publication of the regulations?

Mr. Russell: The question is, is it not true that the regulations, substantially as they appear in this document, were actually in effect during the period covered by the information?

(Testimony of William L. Harrison.)

The Court: You may answer.

A. Not entirely. [100]

Mr. Russell: Q. I wonder if you would explain that answer, sir, and tell me if there are any material changes that had been made?

A. May I see tariff number 6, which is in evidence?

The Court: Yes.

Mr. Russell: I will withdraw that question, sir, and ask you another. Perhaps we can get along faster.

Q. I will call your attention to section 73.50, .51, and .52 of these regulations?

Mr. Collett: What were the numbers again?

Mr. Russell: 73.50, .51 and .52.

Might I approach the witness, if the Court please, to be sure I have given those numbers correctly?

The Court: Yes.

Mr. Russell: Q. Can you tell, me, sir, is it not a fact that those specific provisions, were in effect in substantially their present form as early as May 3, 1950?

A. I really can't answer that without seeing the prior publications, because I have not compared them word for word.

Q. And you are speaking there of tariff number 6 or other documents?

A. Well, tariff number 6 and the supplements thereto.

Mr. Russell: Counsel has been kind enough to provide me with a copy of the Federal Register.

(Testimony of William L. Harrison.)

Q. I will [101] call your attention, Mr. Harrison, to the issue thereof of February 24, 1950, and particularly to page 93 of that Register, and ask you, sir, to compare sections 73.50, 51 and 52 as they appear in the Register and tell me whether or not they do not substantially—comply exactly with the language as it appears in Exhibit 23 for the corresponding section numbers?

A. That is correct.

Q. And with this before you to refresh your recollection, is it not a fact that the regulations in their form as shown on Exhibit 23 then became effective as a result of that on May 9, sixty days after the date of that—or, May 3, I should say, 1950?

A. Yes, I think is the effective date of this correction.

Q. Now, sir, with that thought in mind. I would like to return to the question that I asked of you earlier where you indicated that there were some other changes. Did you have specific changes other than that one in mind at that time?

A. Well, I think explosive tariffs have been published for endless years under the explosive act regulation of explosive articles, and they are subject to constant change.

The Court: If I follow your thought, while there may have been changes, minor changes, they have no application to your problem here. [102]

Mr. Russell: That is my understanding.

Q. Would that be a correct statement, the

(Testimony of William L. Harrison.)

changes that have been made would have no application to our problem here?

The Court: If you know.

A. No, I think that the changes that have been made for the date of the publication, dangerous articles, tariff number 6, which were effective in 1949 to and including the date of that Federal Registry entry, that there are substantial changes in the definition and the description of dangerous explosive.

Mr. Russell: Q. Well, let me ask the question this way, sir. Then you were referring to changes pertinent to the definition of dangerous explosives?

A. That is correct.

Q. And is it not true, sir, that the Federal Register, to which I called your attention, is the issue of the amendment to regulations which accomplishes that change?

A. That is my understanding of it, yes, sir.

Q. And that, to be sure we have the record clear, became effective on May 3 of 1950, as I pointed out to you a moment ago.

A. The supplements to number 6 are not in evidence, but that Federal Register entry is included, I think, in supplement number 5 to tariff number 6, and the effective date is stated on that supplement. [103]

Q. That would be the date of the private publication?

A. That is correct.

Q. But so far as the Government regulation defining terms, it became effective May 3, did it not?

(Testimony of William L. Harrison.)

A. To my best recollection it did, that is correct, and that tariff was amended to reflect that change.

Q. Now, sir, I would like to ask you if you can take exhibit number 23, or any of the Federal Register changes or tariff supplements that you may have mentioned, and show me any point in any of those documents where the words "dangerous explosives" is defined by the Commission anywhere in those regulations?

A. Well, I can take the tariff number 6 and I can give you a pretty good definition of it and I can also tell from the standpoint of definition, give you—cite you reported decisions of the Commission where they have interpreted.

Q. You are referring to exhibit number 22 (* reporter's note exhibit 24), I believe, when you say tariff number 6? A. Yes.

Q. So you will have it before you (handing witness). But the material which is contained in Exhibit 26, so far as it has material pertaining to definition, was not in force from September 1950 to April 1951, is that not true, sir?

A. The wording of the definition was different than it is [104] in the Government exhibit number 24, that is correct. Used different wordage.

Mr. Russell: In order that the record might be clear, might it be understood that my last reference to an exhibit, which was to 22 was intended to mean 24?

The Court: Very well. The record will so show.

Mr. Russell: Q. We do come back to the fact

(Testimony of William L. Harrison.)

that the language as it shows in Exhibit 23 was the effective language of the Commission's regulations at the time the shipments moved, is that not true, sir? A. Substantially correct.

Q. Now, sir, will you point out to me any point in Exhibit 23 where the words "dangerous explosives" is defined by the Commission?

A. No, the wording in exhibit number 23 is different. There isn't any question about that.

Q. And it is a fact, is it not, sir, that the words "dangerous explosives" does not appear at any point in that document in any sections pertaining to definition, if it appears at all?

A. No, that is correct. Used those particular terms. They are definitions of dangerous explosives, or of explosives under the classification of A, class B, and class C. And class A explosives, in this newer tariff, number 7, defined as detonating or otherwise of maximum hazard. [105] Class B explosives are classified as inflammable hazard, and class C explosives as minimum hazard.

I might call attention also to the Court, however, that at the time that the certificate under which the defendant is operating was issued that this particular tariff was in effect.

The Court: This particular tariff?

A. This is Government exhibit number 24, which is the dangerous articles tariff number 6.

Mr. Russell: Q. Despite all your statements, sir, though we do come back to my question, the answer you gave to my question, that at the time

(Testimony of William L. Harrison.)

any of this traffic moved, the Interstate Commerce Commission regulations contained no definition of the the word dangerous explosives, is that not true?

Mr. Collett: If the Court please, I object. He answered the question and referred to Government exhibit number 24 which he states was in effect at the time which counsel is going to great labor to establish before this Court. The question is asked and answered.

The Court: It doesn't give the definition of explosives. You embodied the word "dangerous explosives."

Mr. Russell: No, your Honor, my question was directed to the word "dangerous explosives."

The Court: What? [106]

Mr. Russell: The word "dangerous explosives."

The Court: Yes.

Mr. Russell: Thereunder, takes to be in it a definition of the word "explosives" as section 73.50, but I believe it to be the fact that there is no definition therein of the word "dangerous explosives." That is true, is it not, sir?

A. Well, the Commission has resorted to numerous instances in its regulations, has been called upon to interpret the meaning of those regulations, and it has done so with respect to dangerous explosives.

Mr. Collett: I submit——

The Court: Explosives in themselves to my mind, would be a—— [107]

(Testimony of William L. Harrison.)

Mr. Russell: Well, that is where I bring—we are coming very close——

The Court: I say that just to advise you, so that you may, if I am in error—you can correct me.

Mr. Russell: Perhaps this would be a good moment to mention it. Because it goes to my statement which I made as the opening statement in this proceeding. I think that the lay—if I may use it that way—meaning of the word “explosive” does contemplate that there is an element of danger to all explosives. And that the distinction made by the Commission in our certificates, where sometimes the word “explosives” is used and other times “dangerous explosives” is used, and where, as the witness has indicated, at some time in the past they have classified explosives as dangerous, less dangerous and relatively safe in regulations which are no longer in effect, gives rise to the condition which establishes the fact that the word is here used as in the technical sense as distinguished from its common sense meaning. Perhaps I can develop that in this way, by asking the witness some further questions.

Mr. Russell: Q. You are referring, are you not, when you say to interpretations of the Commission, Mr. Harrison, primarily to a case decided by the Interstate Commerce Commission, Division 5, known as Stringland Transportation, extension, dangerous explosives, appearing in 49 MCC 595? [108]

A. That is correct.

Q. And is it not a fact that in that decision the

(Testimony of William L. Harrison.)

Commission undertook to define the words "dangerous explosives" as used in certificates by reference to the regulations which are before us in Exhibit 24?

Mr. Collett: If the Court please, I am going to object; it seems to me this is developing into a legal argument with this particular witness. I think I understand now that we have a quibble here between what is a dangerous explosive and what is a maximum hazard—it is apparently a distinction that counsel is making here.

The Court: Are you familiar with the case that he is quoting?

Mr. Collett: Yes, if the Court please.

Mr. Russell: I want to be sure, counsel, that we understand that I am not here quibbling on words. I think that I am supported in the motion which I am taking by a long line of Supreme Court decisions.

The Court: Well, whether I agree with you or not, I recognize your preparation in this case and I will give you a record on it.

Mr. Russell: Thank you, sir.

The Court: Subject to counsel's motion to strike, as I did the other evidence this morning. The Court will be fully informed. [109]

Mr. Collett: Well, let the record show, then, that the objection has been made.

The Court: It is going in subject to your motion to strike, over your objection.

Mr. Collett: Yes.

(Testimony of William L. Harrison.)

Mr. Russell: Q. My question—do you recall it, sir?

A. I think so. I had the answer once in my mind.

Q. I will rephrase it for you, sir. I ask you whether it was not the fact that in undertaking to explain the meaning of the words “dangerous explosives” in the case which I referred you to, the Commission made reference in the use of the words “dangerous explosives,” also “less dangerous explosives and relatively safe,” to its regulations, as prescribed and set forth in Exhibit 24, which is before us?

A. That is correct. And it made its determination upon the regulations which were in effect and which are in effect in both tariff No. 6 and No. 7, and to section 72, which classifies explosives as A, B and C. And it said in that case that explosives classified A are dangerous; B as less dangerous; and C as relatively safe.

Q. Now let's be sure. To refresh your recollection, did not the Commission say, “In the Commission's regulations governing the transportation of explosives and other dangerous articles by rail, freight, express and baggage service and by motor vehicle, highway and water, the various different explosives are classified as dangerous, less dangerous and relatively safe, rather than by any reference to Class A, B and C”?

Mr. Collett: If the Court please, I object; the case is reported in Vol. 49 of the Interstate Com-

(Testimony of William L. Harrison.)

merce Commission reports, and the case speaks for itself as a matter of law, for whatever probative effect it has.

The Court: I will make a determination on that, counsel, myself.

Mr. Russell: Very well.

Mr. Russell: Q. Let me ask you, sir—I don't wish to be running counter to the ruling of the Court, and this may be in the spirit of it; but in line with the statement made by the Court a few moments ago, it is a fact, is it not, that in the case to which I have referred, the Commission undertook to classify certain kinds of explosives, referred to in their regulations, as being in a category other than dangerous? A. Oh, yes, it has.

Q. So that they have used the word "dangerous" in a more limited sense than as being synonymous with the word "explosive" itself?

A. I think that is correct.

Q. Yes. Now the regulations to which they referred were changed, as you have indicated, on May 3rd of 1950, and it is [111] a fact, is it not, sir, that those words "dangerous, less dangerous and relatively safe," as they have theretofore been set forth in the regulations, were eliminated?

A. They did change the wordage, but they retained the Class A, Class B and Class C explosives. They applied different descriptive terms to them.

Q. Very well. That is exactly what I had in mind, sir. And is it not also true from your knowledge of the Commission's procedure and practice

(Testimony of William L. Harrison.)

that at least beginning in the year 1951 they desisted from their practice of describing in certificates, as an exception or otherwise, dangerous explosives and undertook to describe them as Class A, Class B or Class C, explosives, as defined in their regulations?

Mr. Collett: Well, I object, if the Court please. This is going outside this particular case, and also is the matter in which I think the regulations speak for themselves.

Mr. Russell: Well, I would like to be heard on that briefly. [112]

* * * * *

The Court: The objection will be overruled. If you know, you may answer.

Cross-Examination—(Resumed)

A. I do not know the answer to that question, because I have not examined any applications nor have I examined or been called upon in any respect to examine any applications.

Mr. Russell: Q. I take it, then,—what you understand from that, sir, is that then at least during the year 1951 you have not had occasion to examine certificates issued by the Commission dealing with the subject of explosives?

A. My answer to that is, the only one that I have had any opportunity to examine, is the pending application, in sub 34, [116] which was filed by the defendant.

Q. In this particular proceeding?

A. That is right.

(Testimony of William L. Harrison.)

Q. I would like now, sir, to call your attention to Exhibit No. 23, particularly Section 73.51 of that regulation, and ask you, are you generally familiar with those provisions?

A. I have read them, yes, but in the application of them I have had no occasion to apply them, in the sense.

Q. It is a fact, is it not, sir, that the explosives which are described in this particular regulation are described as being of such dangerous character that carriers are forbidden to transport them? Is that not the substance of the regulations?

A. Yes.

Q. And that section to which I have referred you immediately precedes the sections defining acceptable explosives, as being Class A. Class B and Class C; is that not correct, sir?

A. That is correct.

Q. So that it is true under the regulations, is it not, that there is a type of explosives which has a higher transportation hazard than those being described in Section 73.52 as maximum hazards?

Mr. Collett: Well, if the Court please, I object to that question as calling for an opinion and conclusion of [117] this witness, and the regulation speaks for itself as to what 73.51 says. It seems to me that is a matter likewise for the Court to decide.

The Court: There is that distinction, is there not?

Mr. Collett: If the Court please, one says for-

(Testimony of William L. Harrison.)

bidden and the other says acceptable explosives.

The Court: However, the objection will be overruled. If you know, you may answer.

A. I cannot answer your question as it was stated. I do not know, I am not an authority on explosives; and when you say that there are some that are more explosive than others, I can't answer it. All I know is that there are some that are forbidden.

Mr. Russell: Q. Perhaps that will answer my question, sir. In other words, those that are shown in 73.51, for one reason or another which you personally do not know, the Commission has said carriers may not handle at all?

A. That is what the book says, that is right.

Q. I see.

The Court: That is what the regulation says?

The Witness: That is right.

Mr. Russell: May I have just a moment to show what I was referring to, to counsel?

The Court: Surely.

(Conversation among counsel out of hearing of the Reporter.) [118]

Mr. Russell: Q. Mr. Harrison, I have available before me a transcript of the proceedings of yesterday. I wanted to ask you one or two questions further developing a statement contained at page 106 of the transcript and I would like to hand you the document. I have it open to 105, so that you may get the context, and marked on my copy

(Testimony of William L. Harrison.)

is the particular statement that I would like to have you familiarize yourself with. (Handing to witness).

A. (Examining document)

Q. Does reading it recall to your mind the thought that was being expressed there, sir?

A. I think so. [119]

* * * * *

Mr. Russell: Q. Returning, Mr. Harrison, to the reading, I will read you the question:

“Question: And it is a fact, is it not, sir, that the words ‘dangerous explosives’ does not appear at any point in that document in any sections [121] pertaining to definition, if it appears at all?”

“Answer: No, that is correct. Used those particular terms. They are definitions of dangerous explosives, or of explosives under the classification of A, Class B and Class C. And Class A explosives, in this newer tariff, No. 7, defined as detonating or otherwise of maximum hazard. Class B explosives are classified as inflammable hazard, and Class C explosives as minimum hazard.

“I might call attention also to the Court, however, that at the time that the certificate under which the defendant is operating was issued that this particular Tariff was in effect.”

Mr. Russell: Apparently making reference to No. 6.

Q. Is that what you had in mind, sir?

A. That is correct, Tariff No. 6.

Q. Am I to understand, sir, that from that state-

(Testimony of William L. Harrison.)

ment you mean that the words "dangerous explosives", as used in a certificate, must be interpreted with relation to the day or date upon which the particular certificate was issued?

A. No, I don't mean that the Court should get that impression.

Q. Well, what did you wish to convey by the expression?

A. What I mean to say is that when the defendant was issued their certificate, there was a restriction in that certificate [122] against the transportation of dangerous explosives, and when that certificate was written, and for a number of years, there wasn't any question, I might say, in my mind, and I can interpolate, in the Commission's mind, of what the dangerous explosives were. They had been set forth in Tariff No. 6, they had been defined.

The Court: Three classifications?

The Witness: Yes, sir.

A. (continuing) And they had been further defined and emphasized in the case which we referred to yesterday, which is the Strickland case, 49 Motor Carrier cases. Now that was the point that I intended to convey.

Mr. Russell: Q. But you do not intend to convey the thought that if a given item, for example, appeared at the time that the certificate was issued, under a classification of A, and because of advances in the science of explosives, its transportation characteristics had been radically changed and it were

(Testimony of William L. Harrison.)

in subsequent years reduced to Class C, that the defendant could not haul that after it had been turned to Class C, simply because it was Class A when the regulations were made? Is that what you wish to say?

Mr. Collett: Objection, if the Court please. I think that is highly argumentative.

The Court: You may answer.

A. Well, my answer to that question is that since the [123] Commission has definitely interpreted the definition of Class A, B and C explosives, that regardless of whether any scientific changes or chemical changes may take place, that they have not receded from their determination that Class A is a dangerous explosive and Class B is a less dangerous explosive. Now yesterday maybe a detonating fuse may have been classified as A. Tomorrow they may be classified a C. I do not know. All I know is that the Commission has not receded from their classification of A and B and C explosives.

Q. It would be, as I understand, from the statement that you have made, this: If, to use the example you have given here, of the detonating fuses,—if tomorrow it should be moved from A to C, it would be your understanding that the defendant could then haul it?

A. That is correct, and I could very aptly explain that in the transportation from Herlong out of there, there were many, many, many explosives which this defendant transported which fell in

(Testimony of William L. Harrison.)

Class C, and they are not included in this information.

Q. As a matter of fact, a substantial number of all fell in Class C, did they not, sir?

A. That is correct.

The Court: They are not charged here.

Mr. Russell: That is correct. I was simply bringing the question out to show the pattern of transportation. [124]

Mr. Russell: Q. Now, sir, you mentioned that the Commission had definitely decided that issue. Can you point to me, as an attorney for the Commission, one single solitary case decided since the present regulations were placed in force on May 9th, 1950, in which the Commission has said that Class A means dangerous, Class B means less dangerous, Class C means relatively safe, or has characterized them in any other way?

Mr. Collett: If the Court please, I am going to object. It seems to me that this develops itself down to some sort of a distinction between what is a maximum hazard as opposed to what is dangerous. The particular wording that counsel doesn't mention—he keeps referring to dangerous explosives—is that in the charge that was made, that refers to it as maximum hazard. And for the purpose of clarification—

The Court: I don't know—what comes of that phraseology, dangerous?

Mr. Russell: What did you say?

The Court: Phraseology.

(Testimony of William L. Harrison.)

Mr. Russell: I have been restricting it to dangerous, less dangerous and so forth, because it is the fact, I believe, that the words in the Tariff No. 6 said Class A, dangerous, maximum; "maximum hazards," words something to that effect. Then Class B, it said, "Less dangerous, flammable hazards." The effect of the change was to leave the document [125] saying, "Class A, maximum hazard." The only change was to pull out of the regulation the words "dangerous, less dangerous and——"

The Witness: "Relatively safe."

Mr. Russell: And "relatively safe." So that perhaps I didn't mean to—I didn't want to mislead the witness; I thought he and I were both familiar with the fact that that language had not been changed. I was talking only about that change.

Mr. Collett: Well, if the Court please, as long as counsel is relying upon his memory, it seems to me that perhaps at this time it might be good to just take the two provisions, 73.51, in the case of——

(Conversation between Messrs. Collett and Russell out of hearing of the Reporter.)

Mr. Collett: Now in the first instance, Class A says, "Dangerous explosives, detonating or otherwise of maximum hazard."

The Court: Otherwise what?

Mr. Collett: "or otherwise of maximum hazard." In the next expression it says, "Class A explosives. Detonating or otherwise of maximum hazard." The two words, "Dangerous explosives" were deleted.

In the case of Class B, the first is, "Less danger-

(Testimony of William L. Harrison.)

ous explosives, inflammable hazard." The change, "Class B [126] explosives, flammable hazard." The words, "Less dangerous," those two words were deleted.

In the case of Class C, the first is, "Relatively safe explosives, minimum hazard." And then, "Class C explosives, minimum hazard." The term, "relatively safe explosives", was deleted.

Mr. Russell: In order that we might have the record clear, let me ask this question.

Q. You so understood that that was the comparative language as in my questions with respect to change, did you not, Mr. Harrison?

A. That is correct, yes.

Mr. Russell: I thought we had a question pending, did we not, Mr. Reporter?

The Witness: You had a question; I can answer that question now.

Mr. Russell: May we have the question read? To be quite frank, I have forgotten precisely how it went.

The Witness: He asked me if, since the adjudication in the Strickland case, the Commission under this new wordage, if they had been called upon to again, to interpret "dangerous explosives."

Mr. Russell: You recall it to my mind now. I don't believe that was exactly my question.

The Court: Well, we will get his answer now.

Mr. Russell: The question is not exactly—he doesn't have my question exactly as it was put, Your Honor.

(Testimony of William L. Harrison.)

Mr. Russell: Q. My question did not relate to the Strickland case, but to a decision subsequent to May 3rd, 1950, the date upon which this changing language in the regulations became effective.

A. I will answer that this way. I have searched and have found no decisions subsequent to the Strickland case.

Q. That's right. Now, sir——

A. That case was decided in 1949.

The Court: '49.

Mr. Russell: Q. And to clarify the matter for the Court, the Commission in that case gave some indication that it had never previously undertaken formally to consider the question of what was meant by "dangerous explosives" in certificates, is that correct, sir?

A. It didn't state it in that term. I think the Commission equivocated slightly, but it said that, "We have defined it, but in case anybody doesn't understand our definition, here it is again." Now that's the way it was.

Q. Now in that decision, as I believe you will recall, they said, did they not, that when they used the term "dangerous" they are including the words "dangerous and less dangerous" as described in the regulation? Wasn't that true, sir?

A. They didn't put it in those words. They said that, [128] "we have defined dangerous explosives——"

The Court: Aside from other administrative

(Testimony of William L. Harrison.)

bodies, am I bound by the Commission's interpretation here?

Mr. Russell: Yes, Your Honor. I believe that goes to the very core of the defense of my case. I believe that we have here a technical word used in a technical sense.

The Court: Yes?

Mr. Russell: And under the—I will argue it at greater length later so the Court may see it. Under the rule first established in the case commonly known as the Abilene case and followed in many, many cases since then,—

The Court: How far is the Court bound by an administrative body?

Mr. Russell: The rule that I have in mind is what we call the primary jurisdiction doctrine. It presumes that both the Court and the Commission, or the other administrative body, have the power to go forward with this particular inquiry.

The Court: Yes?

Mr. Russell: As I read the cases, if the word which is the subject of the litigation is one which has been given a special or technical meaning as distinguished from its common meaning, the interpretation of what that word means becomes an interpretation of fact as distinguished from an interpretation of law. [129]

The Court: Yes?

Mr. Russell: And that until such time as a definite interpretation has been placed upon the word by the administrative agency, simply for the

(Testimony of William L. Harrison.)

purposes of uniformity and performing uniformly—since the matter may come up anywhere in the courts—

The Court: By determination of the court?

Mr. Russell: I say the question may come up in many, many courts. The primary jurisdiction doctrine says that the court will not go forward with the proceeding, but will leave that interpretation to the Commission. I think the Court can recognize the problem. Perhaps there is an example here. The word “dangerous explosives”; if the Court here were to say, for example, that dangerous explosives in the mind of the court meant A, B and C,—

The Court: Well, I am so limited in these explosives, I am frank to tell you that I think—of course I am bound by the letter of the law and the regulations, but suppose a witness is called here and would break down these various shipments and their contents and what they are; would that enter into this case?

Mr. Russell: I say, sir, that it would only secondarily. Only if the court had preliminarily decided that it was going to take the responsibility for fixing the meaning of the words “dangerous explosives.” In other words, I pointed out—[130]

The Court: To my mind, all explosives are dangerous.

Mr. Russell: That is exactly what I have in mind. But we see here, you recall,—

The Court: I say those things; I am frank about

(Testimony of William L. Harrison.)

it. Now I could be entirely mistaken, and if I am, you may have full opportunity to correct me.

Mr. Russell: Well, if you will recall—I might mention—you made some comment similarly yesterday, and I immediately followed—we were discussing also this Strickland case by questions of Mr. Harrison in which he pointed out that all explosives under that decision upon which they rely were not considered dangerous within the meaning of certificates.

The Court: I understand.

Mr. Russell: That goes right to the core of my position. I say then we must find out in this technical language of certificates, if you will, what is a dangerous explosive.

The Court: My thought is, why not take a step further, then, and they could easily produce a witness indicating and breaking down what these shipments were, whether or not they were dangerous. Is that possible?

The Witness: Well, Your Honor, each of the shipments included in the counts which are before the Court, I thought it was in the record that they are either classified under this regulation A or B, and from the plaintiff's point of [131] view, those are classified as dangerous explosives. Now that is my understanding.

Mr. Russell: I say perhaps I have not as yet made my position clear.

The Court: Go ahead. I think you are more familiar with this field than I am. That is the

(Testimony of William L. Harrison.)

reason I have been so patient here. I have to be advised. But since the regulations themselves provide that A and B are dangerous, and we are quibbling about that—

Mr. Russell: That is exactly my point, Your Honor. The regulations at one time did say that A was dangerous, it said that B was dangerous.

The Court: Yes, but they are both dangerous and they are still in the regulations.

Mr. Russell: But for some reason, and we must presume the Commission had a purpose for doing so, it went through those sections in the early part of 1950 and changed the definition, doing just one thing, taking out the words “dangerous,” “less dangerous,” and “relatively safe.”

I might cite an example to point out why I think it is significant. Let's suppose that a carrier interested in solving this problem has the words “dangerous explosives” in its certificate. It goes to the Strickland case and it says there: “Dangerous explosives when intended to mean explosives dangerous or less dangerous, and refers to the [132] regulations using those words obviously as words of technical meaning as they are used in that regulation.

Then the carrier at any time after May 9th turns to the regulations for the answer to his problem.

As Mr. Harrison admitted yesterday on the stand, he can search the document from one end to the other and find no where in it the words “dangerous,” “less dangerous,” or “relatively safe.”

(Testimony of William L. Harrison.)

The Witness: That is not entirely correct. The word "dangerous" is used lots of times in there.

Mr. Russell: Q. But in other connections—I mean, in the definition sections. A. Yes.

Q. Perhaps I am overstating the proposition.

A. Yes.

Mr. Russell: My point, to answer the question which the Court first asked me, in this inquiry is that that puts us in the position where a possibility of doubt exists that perhaps the Commission meant some change in its technical definition and that therefore we have an uncertainty. This Court could feel free to say, taking out those words, there has been a change. The Court might say: I feel all explosives are dangerous; therefore I am going to say in this proceeding that A, B and C are dangerous explosives in the transportation—

The Court: C? The charge here is A and B.

Mr. Russell: If you recall, I raised some question and opposed—. There was a C included in Count 11 and I raised some objection to its dismissal.

The Court: Well, that is not before the Court. It is dismissed.

Mr. Russell: I appreciate that, sir. But that poses the issue which is here.

The Court: I understand. I want to give you full opportunity on the theory that you are trying to get a result on in this case. I usually do that because of my limited familiarity with these mat-

(Testimony of William L. Harrison.)

ters, and I take it you specialize in this type of litigation.

Mr. Russell: I try to, sir.

The Court: Where are you located?

Mr. Russell: In Los Angeles, sir.

The Court: You specialize in rates?

Mr. Russell: Not in rates. Particularly transportation of motor carrier—by motor carriers—that is the principal work that we do, sir, my partner and I.

The Court: I thought that your partner was your brother. Go on.

Mr. Russell: Just as long as we have partially discussed this, I would like the privilege of mentioning just one more phase of this matter before I return to the interrogation. [134]

The Court suggested the possibility of calling someone who was familiar with explosives.

The Court: Since we have been discussing it, it is my present thought to give you an opportunity to change my mind. These allegations are covered in A and B——

Mr. Russell: That is right.

The Court: ——and as far as we have gone, I freely confess to you, as a judicious judge is always brought to do, that under the classification here these are dangerous explosives.

Mr. Russell: I appreciate, sir, the reflection of the Court.

The Court: But because I am frank enough to state that, that does not preclude you from getting

(Testimony of William L. Harrison.)

the proper record here that you are trying to develop.

Mr. Russell: As I say, my comment that I was making with respect to what these things are is that it is really our position here that there is sufficient confusion, let me put it that way, so that the reasonable minds of judges might differ on that subject.

The Court: I trust I do have a reasonable mind.

Mr. Russell: And that the matter for the sake of uniformity should not be made the basis of a criminal proceeding until such time as the administrative agency primarily charged has cleared the matter up.

That is the nub of it, and I have certain cases to cite.

Mr. Collett: If the Court pleases, for clarification purposes further, presently there are 12 counts from the description of the type of explosion would come within the category A, and 3 under category B. Originally there were 14A, 5B and 1C.

The Court: If we are in doubt about B, we will—

Mr. Collett: Whether or not a B became subsequently a C is, I would say, wholly immaterial, because if it became a C, it is not here, we wouldn't have it before us. What is A and B is, of course, and I believe the record will show and the evidence will show, that A has been A continuously and the B's have been B's continuously, and that there has not been any change as far as the Commission is

(Testimony of William L. Harrison.)

concerned, which says that a Class A or Class B is a C, so that if that had been true we would probably have moved to dismiss any of those matters as not being properly before this Court.

Mr. Russell: I think counsel was directing those to the specific items that are here involved, but I would seriously challenge that A's have not been changed to B's, and B's to C's, and that is exactly what I have in mind.

In other words, it is conceivably possible that at the time the information was drawn and the last Federal Register was made available one of these items was a B and as of the [136] date we now speak, today, one of those items might be a C.

The Court: Maybe the specialist will help us on that.

Mr. Russell: I had intended to direct some questions along that line. So perhaps this is a good time to go to it.

Q. I hand you, Mr. Harrison, Exhibit 7 describing, so far as the information is concerned, six boxes of fireworks special weighing three hundred pounds. You might hold that before you (handing to witness).

So far as the record reflects, that shipment constituted, did it not, a full truck of explosives of one type or another? A. That is correct.

The Court: Charged under what count?

Mr. Russell: This is under Count 5.

Q. And it is true, is it not, that all except the

(Testimony of William L. Harrison.)

300 pounds of the some 30,000 pounds of that shipment were small arms ammunition?

A. That is correct. I am taking the words of the document.

Q. Of the document. A. Yes.

Q. Yes. As I understand it, it is the words of the document that you relied on principally all the way through. A. That is correct.

Q. And small arms ammunition in Exhibits 23 and 24 are, generally speaking, Class C ammunition, are they not?

A. That is right. They are classified as Class C. [137]

Q. So that we have in this particular shipment then a very small quantity of Class B and a relatively large quantity of Class C in this particular truck? A. That is correct.

Q. Does the document indicate whether the vehicle was sealed, on its face?

A. No, I have never examined these documents to determine whether they showed on their face whether the vehicle was sealed.

But my understanding is that all of the vehicles were sealed by the Army.

Q. That was your understanding?

A. That is correct.

Q. I would like to call your attention to Exhibit 24, Item 64, which appears on page 45. You find it refers to fireworks? A. That is right.

Q. Reading that item, and you may refer in connection with my question to the classification—

(Testimony of William L. Harrison.)

Mr. Collett: What's the number of that section?

Mr. Russell: Item 64 of No. 6, the superseded rules.

(Discussion between counsel.)

Mr. Russell: Q. With respect to that and to the classification that you have indicated previously you are more familiar with, it does appear, does it not, sir, that [138] fireworks of all classes, listing many different items by the name, designated in that document as being Class B?

A. Class B, less dangerous explosives, that's right.

Q. And Item 64, to which I have referred you, lists many specific things—

A. Yes, it gives examples.

Q. Now I would like to call your attention to Item No. 73.88(d). It is in the other tariff, the one that is before the Court.

Might the witness—

(Document handed to witness.)

A. Seventy-three—what was that?

Q. Point 88(d). It is on page 43.

A. Page 43.

Q. According to the copy I saw. 73.88(d). You find the classification designated as fireworks special, do you not, sir?

A. What sub-paragraph is that, please?

Q. I have point 88, sub-paragraph (d).

A. Yes, that is right.

Q. And that in turn lists a variety of different

(Testimony of William L. Harrison.)

specific commodities, which are deemed to fall within that category—right, sir? Before you make the comparison, would you also look at item No. 73.100(r). You have that? A. Yes, sir. [139]

Q. That also describes a group of fireworks which are listed as “common,” does it not?

A. Well, under Class B it refers to fireworks special.

Q. There. But in another group there is a list of another group which are “common”?

A. They make the distinction between “special” and “common.”

Q. And common. And the “common” are classed as Class C explosives, are they not?

A. That’s right.

Q. Now going back to Exhibit 24——

The Court: Just a moment—wait a minute. How do you classify these B then?

A. From the freight bill, it states on the face of it, “fireworks special.”

The Court: Go ahead.

Mr. Russell: Q. Going back to Exhibit 6, no such classification was made under the former rules dividing fireworks into two different groups, was there?

A. That I can’t answer without——

Q. Would you look at it? You are familiar with the classification?

A. You mean in Tariff No. 6?

Q. In Tariff No. 6, yes.

(Testimony of William L. Harrison.)

A. Well, I can't say—say that I know they have amended this. [140]

The Court: If you are familiar with it, direct his attention to it.

Mr. Russell: I have directed his attention to what I think are the only references, to the classification index that he said he was more familiar with yesterday, and he can compare that.

A. The only one I am familiar with is under Section 72, where they classify A, B and C, and they definitely set out the items.

Q. Would you look in Exhibit 24, in the portion with which you are familiar, and tell me how many different kinds of fireworks you find shown there?

A. There are several in there. That is true.

Mr. Collett: If the Court please—

The Court: There is a definite charge here and the allegation of the type.

Mr. Russell: That is correct, sir, and I will be frank to state, the purpose of my inquiry is to show through this witness that there is a possibility because it involves a matter of judgment of someone at the time those words were used, that it might actually have been something else in the truck.

Mr. Collett: Well, if the Court please, I object to this line of questioning, in that term "special fireworks" was the term used by the defendant himself to [141] define this particular commodity. If there was something else, why did he not define it as something else? He specially puts it in that category.

(Testimony of William L. Harrison.)

They purport to assume to transport a Class B explosive and they define it themselves.

Mr. Russell: Counsel is making a statement there that he has not established in this record and that, I respectfully submit, he cannot establish in this record.

Because, as I think I can develop from this or other witnesses, I am sure, because these vehicles are sealed, the defendant must simply take the words that somebody else has used, to characterize the products in his truck for putting on his documents in order that that shipment may move forward to its ultimate destination.

That was the essence of my objection to the admissibility of these documents, that we are charging the defendant in this case with words which are not his own and which the defendant has no possible way of checking the accuracy.

Mr. Collett: If the Court please, if we might assume that it is impossible to bring any particular one of these trailers or semi-trailers and open the contents as to what was in there, this defendant did identify the contents insofar as they were advised of those contents, and in the face of an operating authority which says that they do not have authority to do certain things, they assumed the responsibility [142] to transport forward what they have identified without themselves doing anything further about it.

Their own statement in itself as to what the con-

(Testimony of William L. Harrison.)

tents were is sufficient to have indicated to them what they were doing.

Mr. Russell: Counsel, I think I can answer counsel's statement, by saying that I hand him this article, which I hold in my hand, and tell him that it holds percussion caps, with a receipt that it holds percussion caps, but it is sealed and he it not to open it. And he as a matter of necessity going only to a point six blocks from here maybe called upon to give it to someone else. So he makes a document, and upon my representation that there are percussion caps in here, he says, for his receipt, one package of percussion caps. I am certain that Counsel would not want to be hailed before this Court under such circumstances, on the basis of the statement contained in his receipt that he had been unlawfully transporting percussion caps. And that is exactly what they are attempting to do with the defendant here.

My purpose of the inquiry, in order to get back to the objection, was to develop from this witness, if he knows the facts, that very point, that this is an example of an item included in the information where changes were made in 1950, wherein it is conceivable and possible for certain reasons a [143] person might, in the interests of precaution in making up that bill, resolve a doubt in his own mind that they were "special" as distinguished from "common," when he must distinguish from a whole list of specific products.

The Court: Who?

(Testimony of William L. Harrison.)

Mr. Russell: Whoever makes up the specific designation.

The Court: Who makes these? Whoever ships them?

A. The Army Ordnance Depot in Herlong, and the transportation officer there. As I stated yesterday, I did not have the bills of lading prepared by the Army Depot transportation officer. The reason I did not have all of those is because they were forwarded for payment. But there are a couple there, two, I think. The reason that I have those, they were extra copies because there was a beyond movement.

But my whole testimony, if I may put it that way, is predicated upon the fact that on each of those bills of lading that the exact wordage is transcribed from the bill of lading by the defendant on to their own freight bills, that on each bill of lading it has "explosives" stamped right on the face of it.

Mr. Russell: Q. Now you are offering a statement. I want to clarify it before you go too far.

I understood you to tell me yesterday on cross-examination that your inspection of these various items was restricted to the examination of the freight bills, the [144] trip report of the driver, and your conversations with Mr. Gottstein. Was I in error on that, sir?

A. Well, to the extent that on two of the exhibits there are bills of lading attached, and I think Mr. Collett interrogated me yesterday on that.

The Court: On the forwarding transaction?

(Testimony of William L. Harrison.)

The Witness: That's right, on the wordage used on the bill of lading and the wordage used on the freight bill. I think you will find that in those two——

Mr. Russell: Q. And on those two?

A. That's right.

Q. With that exception, my characterization, that I have just given you, is basically correct, is it not? A. Yes.

The Court: Those are the only ones you have got, though?

A. Yes, that's right.

Mr. Russell: Q. But you are familiar, are you not, sir, with the fact that from these records it indicates that in every instance of every count in it for the freight which is involved, came to the defendant from some other motor carrier?

A. That is correct. On a bill of lading—on a bill of lading which described from the shipper the exact content of the shipment, together with a stamp that this shipment is [145] classified, packed and is shipped according to the regulations of the Interstate Commerce Commission as contained in this Tariff (indicating).

Q. In answering my question that way, you are presuming because you did not look at the shipping document—you just told me so, isn't that true? Mr. Harrison?

A. I am referring only to those bills of lading which I saw.

Q. The two.

(Testimony of William L. Harrison.)

A. And their—the two of them—and naturally I drew a conclusion they were all the same. But on the ones that I saw that is what was indicated.

Q. All right now. But we do have the fact that this defendant received in each instance a sealed vehicle from some other private motor carrier, right?

A. That's correct. That's correct.

Q. And we do have also the fact, do we not, Mr. Harrison, that that carrier in turn received the vehicle sealed under general practice from the Government.

A. That is correct, with a bill of lading. That is, the functions that I don't want the Court to lose track of, that whenever that vehicle is loaded, there is a bill of lading executed, right there.

Q. Now we are getting back to the point of my interrogation.

The Court: You mean to indicate that was a notice to whoever—— [146]

A. Yes, sir, that's right.

Mr. Russell: Q. Now when we get back to that point, Mr. Harrison, we are getting to the point of my inquiry on fireworks of a few moments ago. At some point in the Government installation must take, who knows what the product is, whether it is a Roman candle or Verry pistol or whatever else it may be, and make a decision in his mind as to whether or not that particular commodity is to be classed as described in that bill of lading as "fireworks special" or "firework common," must he not?

(Testimony of William L. Harrison.)

A. Well, I will answer that this way, if this was a manufacturing establishment that was making fireworks for all different types of use, it would be incumbent upon the shipping clerk to have a pretty good understanding of what he was shipping.

But here it was fireworks special from a military establishment to a military establishment. It is not the manufacturer.

Q. But you do have someone in the military organization—

A. They could make an error.

Q. That's right.

A. They could make an error.

Q. Now I call your attention, and I pick "fireworks special" as an example, because I think it illustrates the point. Look at 73.100, and to the specific commodity. You [147] will find in there—

A. Which Tariff?

The Court: Goes into Class C?

Mr. Russell: Yes.

Q. You will find in there, will you not, sir, that some of the items are listed as Class C only because of the volume of the explosives in their internal content? A. I think that is correct.

Q. So that a given article might be one or the other, depending on how much explosive it had inside?

Mr. Collett: I object, if the Court please, this is purely argumentative.

The Court: Not altogether. I will allow it.

A. I think you are basically correct, in that that

(Testimony of William L. Harrison.)

goes to the whole essence of the issue here, that if the thing is just going to pop when it explodes, that is less dangerous or relatively safe; if it is going to boom and kill somebody, that's dangerous, and the degrees in between. That is the answer.

Mr. Russell: Q. It is entirely possible that faced with a doubt as to whether or not a given article had in it quantity A or quantity B explosive, that a representative of the Government in deciding which way he should characterize it on the bill of lading, in the interests of safety might say: I cannot ship it as a C if it has more than so much, [148] but I can ship it as a B even though it has less. Therefore I will classify it as "fireworks special"; is that not possible?

Mr. Collett: Object, if the Court please; that is speculative. We have here—

The Court: The possibilities don't spell out very much for us.

Mr. Russell: They spell out, if the Court please, I think not very much in the individual case, I will concede. But I do think they spell out the basic seriousness of charging a person criminally when there are other remedies available for being guilty of using certain words to mean certain things or as an understanding as a knowledge of certain things when it is apparent that anyone of a number of people back down the line for a considerable period of time may have done something, as a result of which the defendant must pay a penalty on the basis of things over which he has no control

(Testimony of William L. Harrison.)

since he cannot take the goods and look at them himself.

The Court: The witness on the stand says he has his notice by that bill of lading.

Mr. Russell: That is the point I was seeking to develop if the Court please, by the question that the bill of lading in turn describes a generic phrase, and that somebody must decide whether a particular kind of a Roman candle [149] is a fireworks special or a fireworks common, somebody over whom the defendant has no control.

The Witness: If I may inject myself in here, it does not describe it in a generic term. Each one of those shipments is described as classified A, B or C, and that is not a generic term, —

Mr. Russell: You cannot tell, Mr. Harrison—

The Witness: —in the very wordage of this classification.

The Court: It is 12 o'clock. Can't you hear the bells ringing?

(Thereupon a recess was taken to the hour of 2 o'clock p.m. this date.) [150]

Afternoon Session, Wednesday, April 16, 1952
at 2:10 o'clock p.m.

The Court: You may proceed, Gentlemen.

Cross-Examination—(resumed)

Mr. Russell: Q. Mr. Harrison, you will recall just prior to the noon recess I was addressing certain questions to you with respect to the particular item fireworks special, which I had selected as

(Testimony of William L. Harrison.)

a possible example. Would it not be correct, Sir, under the regulations as described in Exhibit 23, that fireworks special as the word is used there is a generic term in its sense, in that it is used to cover a number of different items as distinguished from some specific physical product that we might take in our hands, as being the only possible thing that could be described as a fireworks special?

Mr. Collett: If the Court please, I object that the term speaks for itself. This is a matter that—

The Court: That will be a matter for this Court to make a determination on, not this witness.

Mr. Russell: Very well, if the Court please.

Mr. Russell: Q. Earlier in the examination this morning I asked you certain questions, if you will recall, with respect to the statement made near the end of the afternoon session on page 105 and 106 of the transcript with respect to the varying language in the orders and varying dates of certificates. Do you recall generally that subject of inquiry, without—I am not intending— [151] do you know to what I refer?

A. No, I do not, exactly. You say varying language in certificates and orders. I don't recall—

Q. Well, let me put the question in this way. Do you recall the statement that you made yesterday afternoon to which I addressed your attention this morning specifically by referring you to the transcript? Would you like to have it again?

A. Well, I believe I had better, because I— (examining transcript). Yes, now I recall.

(Testimony of William L. Harrison.)

Q. I want just to be sure that I understood your statement with respect to that amplification this morning. Did I understand it to be your statement in clarification this morning that the meaning of the words "dangerous explosive" might vary with changes in the regulations from time to time, depending upon where a particular item was classified?

Mr. Collett: Well, if the Court please, I think again I will object on the grounds that we have been over this matter rather fully and I believe that for the Court to determine whether or not the matter that had been presented and the evidence before this Court, that comes within the provisions found within the regulations, and the matter that has been shown. It is not for this witness to determine or define the terms.

The Court: I have allowed the widest latitude here. [152] I think we are making no headway.

Mr. Russell: If the Court please,—

The Court: I would allow this question to be answered, but keep that in mind. If you are able to answer, you may answer.

A. Well, my only answer can be that the Commission, I think, under the act, the Federal statute, is authorized to prescribe these regulations, and that is, it has prescribed regulations pursuant to, and it no doubt could make some changes if it felt it necessary.

Mr. Russell: I hesitate to inquire further in view of the Court's comments. I would like to state

(Testimony of William L. Harrison.)

simply this, that one of my purposes of interrogation of this man, who undertakes to have some familiarity with the subject as to developing—

The Court: He can't speak for the Commission.

Mr. Russell: But I do wish to develop that he has some expert background in the field.

The Court: That is the reason I have allowed this latitude.

Mr. Russell: And my purpose, and I wish to explain it before I undertake to close any other questions along the line, in view of the Court's statement—is simply to develop in this record the very fact that this meaning of this term is something subject to variation, something [153] subject to technical description, for the purpose of establishing for the Court that it is one of those things, one of those words, contrary to Counsel's statement, is something which it is not for the courts to decide but for the Commission to decide.

The Court: Give me an example of what you have in mind.

Mr. Russell: I have in mind this situation. It is a little difficult for me to think really of an example that comes closer than the very matter—

The Court: That is the reason I am having some difficulty following you.

Mr. Russell: —that we have here. Let us take this example, though it is not exactly the same situation in its fact element. Certain words are used in a tariff describing a commodity, which are used not in the lay sense but used in a technical

(Testimony of William L. Harrison.)

sense to describe a particular kind of article. For transportation purposes it has different characteristics, or certain characteristics can cause it to bear a certain rate. With certain other characteristics, a very similar article may carry a different rate. That tariff is filed and approved by the Commission, and as such, as the Court is well aware, it has certain stature as a matter of law. Then a proceeding arises, perhaps as a criminal complaint against the railroad for having described this article as item A when there is a description of item B [154] of a higher rate which would carry a higher rate, that the Commission says should be the rate charged. Since the word is not used in its common or lay sense, and within the meaning of the common understanding, either of the words might fittingly describe the particular product. Carrying my example further, I might say that a given article, let's say it was a piece of steel with certain work done upon it, might in the lay sense be used to mean either one of these two things that are described in this regulation document. The matter comes before the Court, the technical word is involved, the meaning—whether the word is technical in its sense, or its lay sense—is involved. It is a matter merely of construction of the meaning of an ordinary lay word, I think, as the Court well recognizes, that is a conclusion of law which the Court makes; but the Court, when it finds that the word is technical or unusual or specially used, must make a preliminary finding that it is, as a matter of fact,

(Testimony of William L. Harrison.)

this word which ordinarily may mean something else, but which has in this particular case a certain meaning.

Now the obvious result of that is, as I indicated in discussing a related matter this morning, that one Court might say this technical word means, as a matter of fact, certain things; and then proceed to say that the particular product that I now have before me is being classified under that definition, fits that definition as being item A. [155] Yet another Court, presented with exactly the same facts, could reasonably come to a conclusion that it is a matter which should have been classified the other way. It is a situation which cannot be solved on appeal, because even the opinion of the Supreme Court would be a determination of a matter of fact as to what this word embraces when used in its technical sense. So that to solve the problem and to avoid hopelessly conflicting determinations, the Courts as a matter of policy in interpreting laws, where both the Court and the Commission, or the Court and the other administrative body have some to speech, says as a matter of policy, "We will not undertake to pass upon the meaning of that word as a matter of fact, but will leave that to the Commission."

Now it is my purpose in directing these questions to this witness, as a man with some experience in the field, to show to the Court that this word "dangerous explosive," as it is used in the certificates, has a meaning technical in its sense, as distin-

(Testimony of William L. Harrison.)

guished from its lay or common meaning—and that this inquiry that I am now conducting is to show that even then it is a changing meaning, that the Commission can change its terms.

The Court: That goes back to what I have indicated this morning in relation to the administrative body: how far this Court is bound by their interpretation. [156]

Mr. Russell: Well, I respectfully submit to the Court that the question I seek to pose and the problem I seek to raise is not exactly that problem, but that it is the problem of the policy of this Court, where it is called upon to interpret words that lie by virtue of legislative enactments of the Congress in a field where an expert body has been set up—even though the Court has within its province and its power to find as a fact that this word means certain things—

The Court: Now let me inquire. You have a theory of this case and I think I know what you are trying to establish. I want to give you a record on this.

Mr. Russell: I appreciate that.

The Court: So that if I disagree with you, you will have an opportunity to have a further determination on it. Doesn't this record already disclose anything that you wish to prove?

Mr. Russell: Well, the reason I went back to this subject at this moment was that this morning we were deflected by a specific question or an objection, and I began on another tack before I had

(Testimony of William L. Harrison.)

quite concluded my inquiry of the witness on this particular field. I was hoping just to wind that up by my inquiry.

The Court: Well, if you want to wind it up, I will give you an opportunity so that you won't go back to Los [157] Angeles disappointed. Proceed.

Mr. Russell: Well, perhaps I could handle it in this fashion.

Mr. Russell: Q. I call your attention, Mr. Harrison, to Exhibit Number 1 in this proceeding, which undertakes to describe the certificate issued to this defendant, and call your attention to the fact that the date of that order is the same date as the order of the Commission amending the regulations governing the transportation of explosives, and ask you whether or not from your understanding of the manner in which these matters are handled, that that coincidence of date might have any significance.

The Court: If you know.

A. I don't know that it has any significance. All I do know is that this is what we call a consolidated certificate, that this certificate has been rewritten. In other words, the authority now owned by West Coast Fast Freight was a purchased authority in the beginning. They have added to their authority by other purchases, and they have secured extensions of operating rights. In those instances, as a matter of convenience instead of having to have numerous authorities, the Commission will issue a consolidated certificate, and the mere fact

(Testimony of William L. Harrison.)

that it is dated on this date, —I do not know the significance of that point. [158]

Q. But I believe you will agree with me, will you not, Sir, that the words as they are used in there need not reflect back to the date that the original person acquired the right, but that they have their meaning on the basis of current regulations of the Commission at all times? A. No.

Mr. Collett: Well, if the Court please, I will object to that question——

The Court : The answer is no. Allow the witness to express himself.

Mr. Russell: Q. Did I understand you, Sir——

A. Yes, I can explain that. The answer is, if you buy a pig on a poke, you buy a pig in a poke. If you bought carrier A and he had certain rights, you get just those rights and that's all.

Q. Well now, I believe that if I understand you correctly, that I am eliciting different responses than I did this morning. Let's suppose, to pose the question, that the right which covers the authority to transport property between Oakland and San Francisco was originally secured as a grandfather right by virtue of operations conducted on June 1, 1935; that it then passed to the defendant by transfer, say, in 1947, without any change in the language; that the transportation here was performed in 1950. Now what regulations of the Commission do I understand you to say [159] would be the regulations that the Court should look to to find the meaning of the term in this proceeding? Would

(Testimony of William L. Harrison.)

they be the regulations in effect on June 1, 1935, when the right originally came into being, or 1947, when the right was transferred, or today?

Mr. Collett: If the Court please, I am objecting to that question as being compound, complex, hypothetical, and speculative.

The Court: I realize it is, but in order to get through, why, I will allow the witness to answer.

Mr. Collett: If the witness understands what the question is, maybe he can answer it.

Mr. Russell: I might state—

A. I understand, I think, if I may answer. The certificate is not changed; that is, the wording of the certificate is not changed. In other words, if the authority which, as I understand, Colletti Fast Freight was the original owner of this certificate, and as far as I know, that is the wordage exactly of the certificate issued to Colletti Fast Freight. It is true that in transfers, and as time progresses, and there have been changes and modifications and transportation problems. There is an administrative procedure which takes considerable time of the Commission, and that is this, that if, when one carrier buys a carrier's rights, and they think they got one thing and it turn out [160] that they got another, they apply to the Commission for an interpretation of the certificate, and in that manner the certificate could be reworded upon order of the Commission to fit the demands or to fit the operating intent of the carrier as shown by a public convenience and necessity.

Mr. Russell: Q. My question was, Sir, assum-

(Testimony of William L. Harrison.)

ing that the words actually in the document before you stayed the same, dangerous explosives, it is still true that the specific articles may change from time to time, and that by virtue of that change in the regulations, a given product, such as, fireworks common that we were discussing this morning— might in 1947 be an article which, under your classification, would be a dangerous explosive then and today no longer be such an item? Isn't that your interpretation of the regulations?

Mr. Collett: If the Court please,—

The Court: You are going afield, I fear.

Mr. Russell: Very well, I won't press the matter unduly.

A. Well, I can answer that this way. This certificate says dangerous explosives, and there is a restriction against it; and as I understand it your predecessor in interest secured a grandfather application. That is, a grandfather right that had been in existence. Assuming, then, that his rights were established upon the regulations which were in [161] effect in 1935, the mere fact here in Exhibit 2 that the West Coast Fast Freight, who was a defendant here, uses the same terms and the same language in their application for an extension, when they have applied for dangerous explosives— so my only answer is that dangerous explosives are the same now as they were back in 1935.

Mr. Russell: Q. In other words, if I understand you, Sir, it is necessary for the defendant, in

(Testimony of William L. Harrison.)

order to interpret its certificate to have available——

Mr. Collett: If the Court please, if this is the question, I would like it to be a question.

Mr. Russell: Well, I am trying to pose it as such.

The Court: What's that?

Mr. Russell: I said I was trying to pose it as such.

The Court: Well, it now becomes necessary to become judicial. Proceed, Gentlemen. I will rule.

Mr. Russell: My question, Sir, was, if I understand you correctly, that it is necessary for the defendant in order to know what particular products it may transport and which it may not transport, which are of explosive character—it is necessary for the defendant not only to look at the current regulations of the Commission, but to the regulations which may have been in force at the date that authority was created, either by a grant to them or to their predecessor? Is that my understanding? [162]

Mr. Collett: I object, if the Court please, and that is calling for an opinion and conclusion of this witness, and a matter that is for this Court to determine in the light of the regulations and the evidence before the Court—whether or not there are changes remaining here.

The Court: The objection will be sustained.

Mr. Russell: Q. Mr. Harrison, under the document which you have before you, Exhibit Number

(Testimony of William L. Harrison.)

1, it is correct, is it not, that the defendant has the right to transport dangerous explosives between certain of the points that it serves?

Mr. Collett: Well, I am going to object, if the Court please; the document speaks for itself.

The Court: Well, the points that have been served have been indicated here. You are assuming a fact not in evidence.

Mr. Russell: Very well, Sir.

Mr. Russell: Q. Certain of the shipments which are involved in this proceeding involve the transportation over the highway of explosives, according to the records, between the cities of Tacoma and Seattle, do they not? Is that not correct?

A. Yes, I think there were probably two shipments that went onto Seattle and then to a beyond point.

The Court: Forwarded?]163]

The Witness: That is right.

Mr. Russell: Q. And it is correct, is it not, Mr. Harrison, that portions of the operating authority described in Exhibit 1 will permit, so far as physical operation over the highway is concerned, the defendant to operate its trucks between Tacoma and Seattle in the transportation of dangerous explosives without being in violation in any way of its certificate?

A. I think that is right. The defendant does have some authority, and that is the main reason why it participates in this explosive tariff.

Mr. Russell: I think that's all the questions I have, Mr. Harrison. Thank you very much.

(Testimony of William L. Harrison.)

Redirect Examination

Mr. Collett: Q. And Mr. Harrison, that term with regards to that particular authority is “dangerous explosives,” is it not?

A. Well, it is the authority is unrestricted. It doesn't say, “You may transport dangerous explosives” affirmatively; it says “General commodities, with no restrictions.” That means the door is open.

The Court: Is that all from this witness? [164]

The Court: That is all from this witness?

Mr. Collett: No.

Redirect Examination

Mr. Collett: Q. Calling your attention to Government Exhibit 23, which is Motor Carrier Explosive—Dangerous Articles Tariff No. 7, and Government Exhibit 24, and Dangerous Articles Tariff No. 6, would you look in each of those exhibits, and calling your attention, first, to detonating fuses—what is the classification with regard to that particular commodity as a maximum hazard or a dangerous explosive?

Mr. Russell: Just a moment; could I have the question?

The Court: He says it is classified as type A. What is the classification?

A. The classification is divided into three parts,—

The Court: Dangerous—

A. —B and C—and under the Explosive Tariff No. 6 they have been further identified as Class A

(Testimony of William L. Harrison.)

dangerous explosives, Class B, less dangerous explosives, and Class C, relatively safe.

Mr. Collett: Q. And in this Government Exhibit No. 23, the Tariff No. 7, the term is what?

A. Maximum hazard and flammable hazards, and minimum hazard.

Q. The commodity explosive projectile for cannon, what [165] is that classification?

A. That is type A.

The Court: And designated "dangerous explosives"? A. Yes.

The Court: That is the classification?

A. That would be in the classification in No. 6, classified as that.

Mr. Collett: Q. In Government's Exhibit 24, which is Tariff No. 6, it is classified A dangerous, and in Government Exhibit 23? A. Type A.

Q. I will call your attention to the commodity rocket ammunition with empty projectiles in Government Exhibit 24 Tariff 6. How classified?

Mr. Russell: If the Court please, I would like to object to that question on the grounds that it is incompetent, irrelevant and immaterial to the proceeding, on the basis that Tariff No. 6, Exhibit No. 24 was not an existing regulation in the Commission at the time this transportation moved.

I make that objection and realize fully that I have interrogated with respect to both, but my interrogation, as I indicated, went to the question of the meaning of the terms, and we are here going down attempting to fix a classification character-

(Testimony of William L. Harrison.)

izing the nature of the commodity [166] upon the basis of a regulation of the Commission which has no longer any probative force.

I might state that I have no objection to Counsel asking the same question he now asks if it is posed and directed to Exhibit No. 23, the current regulation.

Mr. Collett: If the Court pleases, the two exhibits are there, they have been used extensively with reference to various portions I am calling the Court's attention to, the designation in each of the Exhibits as pertaining to——

The Court: Objection overruled. Can you answer that?

A. Pardon me. The rocket ammunition was explosive projectile, you asked me?

Mr. Collett: Q. Rocket ammunition with empty projectile. A. Is typified as B here.

Q. B in which exhibit?

A. That is Exhibit No. 23, which is Tariff No. 7.

Q. And in Government Exhibit 24, Tariff No. 6?

A. I can answer that without looking because I have checked these, but I will——

Mr. Russell: In the interest of saving time, if the Court please, I believe Counsel is proceeding——

Mr. Collett: I am going to go through them.

Mr. Russell: Each one. Might it be understood——

The Court: Maybe you can get a stipulation.

Mr. Russell: Might it be understood that as he

(Testimony of William L. Harrison.)

asks [167] this question related to Exhibit No. 24 that I have the objection previously urged, and we might have a stipulation that the Court's ruling will be the same, on that, to avoid my objection to each time you ask a question.

Mr. Collett: That is agreeable.

The Court: The record will so show.

Mr. Collett: You want to stipulate to each one of these? It will save my time in asking down the line on each count?

Mr. Russell: I couldn't do so at the moment. The reason I am hesitating for the moment, when you gave the figures earlier to the Court, I had a difference of one count.

The Court: Five?

Mr. Russell: No. I had a difference as to one in number, as to how many were shown in Exhibit 24 as A, and how many shown as B.

The Court: You gentlemen settle that. There is a gentleman of importance waiting here. We will hear from him.

(Thereupon the Court proceeded to another matter, the case at bar continuing after a ten-minute recess.)

The Court: Now, gentlemen, have you made up your mind what to do?

Mr. Collett: Yes, if the Court please. I have been referring to Government Exhibits 23 and 24, which are the two Tariffs 6 and 7, and endeavoring from each of those to have the witness as to the classifi-

(Testimony of William L. Harrison.)

cation type, A, B or C [168] explosive. Counsel has made an objection as to Government Exhibit 24.

Mr. Russell: Of materiality, upon the ground—

Mr. Collett: We are ready to stipulate as to the classification of each one of the types of explosives named in the counts, and I will run down the list.

It is to be understood that the defendant's objection as to Government Exhibit 24, which is Tariff 6, runs to each one of the classifications.

The Court: The record will so show.

Mr. Collett: Count 1, it is testified, is Class A, that is detonating fuses.

Count 2,—explosive projectile for cannon—Class A.

Count 3—rocket ammunition with empty projectiles—Class B.

Count 4—ammunition for cannon with explosive projectile—Class A.

Count 5—fireworks special—Class B.

Count 6 has been dismissed.

Count 7 has been dismissed.

Count 8 has been dismissed.

Count 9—hand grenades—Class A.

Count 10 has been dismissed.

Count 11 has been dismissed.

Count 12—ammunition for cannon with explosive projectile—Class A. [169]

Count 13—ammunition for cannon with explosive projectile—Class A.

Count 14—ammunition for cannon with explosive projectile—Class A.

(Testimony of William L. Harrison.)

Count 15—ammunition for cannon with explosive projectile—Class A.

Count 16—ammunition for cannon with explosive projectile—Class A.

Count 17—ammunition for cannon with explosive projectile—Class A.

Count 18—fireworks special—Class B.

Count 19—ammunition for cannon with explosive projectile—Class A.

Count 20—black powder—Class A.

Mr. Collett: Q. Mr. Harrison, what is a participating carrier?

Mr. Russell: To which I am going to object on the ground it is incompetent, irrelevant and immaterial, and it is outside—it is no proper redirect examination.

The Court: I will give him a record on it. The objection will be overruled. You may answer.

A. I can best explain that by reference to this Tariff. This happens to be an explosive Tariff. There are no rates involved in this tariff.

Generally the basis of a tariff is rates, but [170] each carrier does not publish, generally speaking, its own tariff. A lot of smaller carriers do. The larger carriers issue a tariff by a tariff publishing agent. In other words they hire somebody to publish a tariff and they become a participating carrier, by issuing what they call a power of attorney to that issuing agent.

In this instance this tariff is published by the American Trucking Association, its agent by F. E.

(Testimony of William L. Harrison.)

Freund, the publishing officer, and you will note in the fore part of the tariff the list of participating carriers, in other words those carriers who have issued a power of attorney to this issuing officer and thereby make this tariff their tariff.

Mr. Collett: Q. The defendant West Coast, is it named in that group of participating carriers?

Mr. Russell: May it be understood I have the same objection to this question as to the previous one?

The Court: Note the objection. The objection will be overruled. Let the witness answer.

A. Yes, in certificate No., which is listed, 55905, date of issuing power of attorney, and it is listed as a participating carrier subscribing to this tariff.

Mr. Collett: No further questions.

Mr. Russell: I have just one question, if I might on recross. [171]

The Court: Proceed.

Recross-Examination

Mr. Russell: Q. Mr. Harrison, the procedure which you have just described of the participation by West Coast in the tariff is such that under the regulations of that tariff they participate only to the extent of their authority so to do as issued by the Commission, there is such a rule in the tariff, is there not?

A. Well, all tariffs have this provision in it, in effect, that the provisions of the tariff apply only insofar as the operating authority of the carrier is involved.

(Testimony of William L. Harrison.)

The Court: That is to the forwarding carrier?

A. Well, it could, if they are participating carriers. That is true.

Mr. Russell: Q. To clarify the matter a little further, Mr. Harrison, the document is prepared, is it not, so that it can be used by a multitude of people who may have a variety of operating authorities?

A. The general tariff is, that is correct, and so indicated by the number of participating carriers in this tariff.

Q. And the purpose of the rule to which I have directed your attention is so that each carrier will be a participant in the whole document only to the extent of his particular authority, is that not correct?

A. Well, that is substantially correct. We have found [172] many instances where a carrier with limited authority has participated in a certain tariff and by virtue thereof considered that they have authority to operate in all respects covered by the tariff.

Q. You are not making any inferences with respect to this defendant in that regard, are you, sir?

A. No, no, that is true.

Mr. Russell: That is all. Thank you.

(Witness excused.)

Mr. Collett: If the Court please, that is the Government's case.

Mr. Russell: If the Court please, I have two motions which I would like to make before presenting evidence, and I wish to confess that I have limited experience in criminal proceedings before this Court. My examination of the Rules of Procedure lead me to believe that a motion for acquittal almost nearly fits the situation of the motion that I am about to make. However, as I have indicated to the Court, in a sense the matter is directed to jurisdiction, not in the absolute sense, but jurisdiction in a policy sense, and I rather construe the motion for acquittal being one directed to the sufficiency of evidence, and I will state my grounds and I trust and hope that the Court, if it feels it is well taken, will determine whether or not the words "motion for acquittal" are properly to be applied or "a motion [173] to dismiss" in view of the——

The Court: They are synonymous.

Mr. Russell: I have given some indication of the motion in my discussions previously. The motion, I think perhaps I can best explain, if I were to take simply one of the documents here, any one at random, to use as an example.

I happen to pick up the one relating to Count 9, Exhibit 7, which is Box Hand Grenades.

It is the position of the defendant that the commodity which it is alleged by the Government was transported was a box of hand grenades, so that the Court now has the problem of deciding whether or not that particular article falls within the scope of the certificated authority of this defendant. I think quite naturally the first point of inquiry, since we

are charged with operating without a certificate—that is the basic charge, not the transportation of explosives as such—that as such is not the crime provided—you comply with certain other statutes.

We then turn to the certificate, which is Exhibit 1. In doing so, and with particular reference to the portion on sheet 4, to which attention of the Court was specifically drawn by Mr. Collett yesterday, we find the language “Generally commodities except—” listing a number of exceptions, among which is “except dangerous explosives”. But we do not find any exception against the transportation of hand [174] grenades as such, so that, in order to determine this proceeding the Court is called upon to determine whether or not hand grenades, and I am using that simply as the example that I happened to pick, is a dangerous explosive, so as to fall within that exception.

At that point the Court is presented with the problem, which the Court has indicated something of previously by the comments to the Court “explosives are dangerous.” That’s the first problem.

The Court: The defendant got notice.

Mr. Russell: Very well, I appreciate that, sir, and that is a point which I think involves a consideration of evidence which can only come after we have passed a certain point. [175]

* * * * *

Now, I would also like as a part of my motion and as a separate part thereof to direct the Court’s attention to the fact, strictly on the basis of the evidence, that there has been an insufficiency of proof.

All that the Government has put in in this proceeding to establish the fact that on trucks of the defendant there rolled over the highway certain products or certain freight bills which, it appears, related to shipments coming from the Government of the United States in a sealed condition which this defendant could not see; and that at least in all of the counts of the information with respect—except 2—the Government's representative did not even see the underlying document which he believed was used as the basis of description, to wit, the bill of lading. So here we are arriving at an attempt to convict upon hearsay, if you will.

Let us assume that in each instance a bill of lading was shown, and that the bill of lading did reach the hands of the defendant, or we will take the three where they did, or the two, rather. The evidence is clear that the investigation of Mr. Harrison did not go beyond the point of discussing with the accounting people, who in turn were speaking just from an accounting standpoint—no more than in effect, "Here is a record from our records." Now the only justification that possibly exists for these documents is on the course of business exception to the hearsay rule. [196]

Now here we have affirmatively shown one of the elements lacking, which is necessary to the course of business doctrine as a prerequisite, and that is any proof of the fact of actual knowledge of the act as such. In other words, it was simply a ministerial act, if I may put it that way—the preparation of a document to permit its movement on a vehicle,

the contents of which were actually known. But let's suppose that we do say, "All right, that document of the defendant is of some value; it was in its records." Where did these words "percussion fuses" or "detonating fuses" come from? Mr. Harrison has indicated he doesn't know from his own knowledge, except possibly as to two counts, where he has a copy of the bill of lading. Let's take those two. He says, "All right, that was taken."

The Court: That is in the record here.

Mr. Russell: That is my understanding of the record. Isn't that correct, sir?

We take that document. That document is again a business record in and of itself.

The Court: Well, how can you condemn it because it is a business record?

Mr. Russell: I am not condemning it because it is a business record; I am saying it is a hearsay, or a form of hearsay which is allowed because it is a business record.

The Court: Yes. [197]

Mr. Russell: It is given certain credibility.

The Court: I see.

Mr. Russell: But nonetheless, it is a record made in the course of action by someone. Now that someone is not a part of the defendant's organization. That is not someone with whom the defendant has personally dealt. All of the shipments moved through the hands of someone else before they arrive at the defendant, into the defendant's possession. But in any event, we go back to the proposition that that document was prepared by someone else, in which certain words were used.

Now I have developed through the examination of Mr. Harrison, I think, in connection with this firework special, that that again is a generic term. [198] It involves a matter of independent judgment by the person using it as to whether or not the specific product, whether it is a roman candle or a flare, is properly to fall within that classification of fireworks special.

So back of this business document, the bill of lading, is an element in virtually all of these cases, if not all of them, of personal judgment of someone who is not here, who did not see this commodity, and who, in making it, may never have seen the commodity. We don't know. We don't know. We have no proof in this record, no direct proof except these words in a freight bill which come through all that chain of circumstances.

The Court: That is to my mind a notice. [199]

* * * * *

If the Court please, I have a very sincere belief that this is a matter which should be presented upon the merits, and I have accordingly argued my motion on the merits first, to wit: The insufficiency of the evidence and, secondly, the matter of the primary jurisdiction doctrine. I do, however, feel that I owe it to my client to exhaust all motions and remedies which I feel are available, and I [204] therefore in accordance with the permission that was given by the Court make at this time the motion to strike Exhibits 3 through 22, both inclusive, and the testimony of Mr. Harrison, with respect to those exhibits as to anything that they may show, his testimony as to what they reflect, as

being hearsay in this proceeding, incompetent, irrelevant and immaterial, and failing to establish as proper evidence the fact of transportation. [205]

* * * * *

The Court: For the purpose of the record, your motion will be denied.

Mr. Russell: If the Court please, at the conclusion of my statement yesterday, just before the interruption, I had made a statement of a motion to strike in addition, the documents on the failure to establish the foundation, and on the ground that they called for hearsay under the——

The Court: I think you covered that.

Mr. Russell: Well,——

The Court: If you did not, I will allow you for the purpose of the record to make a general objection.

Mr. Russell: Well, I did, and I was urging—I made an objection to the documents subject to a motion to [227] strike, and I was now seeking to make the motion to strike those documents and the testimony of Mr. Harrison, which undertakes to be a statement from those documents, because it appears to come from their source and nowhere else. Also on the ground that they are hearsay and are not admissible in this proceeding, to establish the fact of transportation. I take the liberty of mentioning it here because the Court's statement may have been a ruling on the motion, and I thought possibly there might be some different ruling with respect to the sufficiency of these documents to meet the requirements, which would make a con-

siderable difference in the presentation of the defense.

The Court: Let the record show the motion will be denied.

Mr. Russell: Is Mr. Strock in court?

MELVIN E. STROCK

a witness called on behalf of the defendant, sworn.

The Court: Q. Your full name, please?

A. Melvin E. Strock, S-t-r-o-c-k.

Q. Where do you live?

A. San Francisco, sir.

Q. Your business or occupation?

A. I am the district manager for West Coast Fast Freight in the Bay Area.

Q. And how long have you been so engaged?

A. Since September 1947, sir. [228]

The Court: Proceed.

Direct Examination

Mr. Russell: Q. Where are your personal offices located in the Bay Area, Mr. Strock?

A. In Oakland, California.

Q. Where are they with respect to the terminal properties of the defendant? Are they on the terminal properties?

A. That's right, right on the terminal properties.

Q. Calling your attention to the period from September 3, 1950 to May 6, 1951, I would like to ask you, sir, were you on a daily basis substantially all of the time regularly at that place of business? A. Correct.

(Testimony of Melvin E. Strock.)

Q. What are your duties at that place of business?

A. Well, I am the district manager. I have quite a few people working with us. Full charge of all the personnel and the records of the company and—well, that just about covers it.

Q. Do you have occasion personally to see or did you during that period did you have occasion personally to see loads of freight coming in and going out of your place of business at Oakland?

A. Daily.

Q. Did your company during that period of time transport certain freight beyond Oakland, California for the Sierra [229] Ordnance Depot at Herlong, which came to you by Wells Cargo and other carriers?

A. We did.

Q. Did you ever have occasion to see any of those leave?

A. Certainly.

Q. Do you have some general idea of the total number of those shipments that were handled, those truckloads that were handled?

A. Well—

The Court: Approximately.

Mr. Russell: Q. Just approximately.

A. I know that we have handled quite a few of them.

Q. Could you give me any idea of approximately what proportion of those vehicles you may personally have seen?

A. I would say 75 per cent at least of all the vehicles out of the terminal, I will see.

Q. Do you have any specific recollection here—strike that question.

(Testimony of Melvin E. Strock.)

Have you had some opportunity to familiarize yourself with the different shipments which it is alleged, which make the basis of the information in this proceeding?

A. Do you mean—. I want to get this straight.

Q. Have you had some chance since the case has been pending to inquire with respect to these particular shipments? Not with respect to its safety, but just to know which ones they are. [230] That is what I had in mind.

A. Yes, yes.

Q. Do you have any independent specific recollection of having seen any one of these at the time that it was in the truck yard?

A. Well, I would say I would see the van or the vehicle, but not the contents.

Q. Can you tell me, sir, whether or not those vehicles were sealed?

A. Always sealed.

Q. Would you describe the seal?

A. Well, a government seal carries a number and usually the name of the depot that it is shipped from. For example, on the Herlong shipments the seal reads "SRA", and then the numbers of the seal.

Q. Where are those seals physically placed?

A. Well, on the rear doors.

Q. If the truck has more than one door, are all doors sealed?

A. All doors are sealed by the government.

Q. Do you have any procedure, regular procedure at your office with respect to sealing all vehicles if they are not sealed by the government?

(Testimony of Melvin E. Strock.)

A. We seal all our vehicles running out of the Oakland terminal.

Q. Are those seals that you are now speaking of seals of the company? [231]

A. Seals of the company.

Q. Is there any or was there during this period of time any instruction from you to other employees that if a government seal should not be on a document, that certain procedures should be followed?

A. That's correct.

Q. What were your instructions in that regard?

A. Well, the first thing, if a vehicle would come to us from the government not sealed, we would not move it from our yard. The fact is, we would not move any box from our yard, or van, as we call it, unless it is sealed—either by the government or by our company. If the government should give us a vehicle not sealed or our connecting carrier, we would call—in this case we will use the Sierra Ordnance Depot. We would call the Ordnance Depot at Oakland and ask them to come over and apply a seal and check the contents of the van. This has never happened, to my knowledge.

Q. Did you have instructions outstanding at the time we are here concerned with, between September of 1950 and 1951, that if any vehicle were so found, it should be reported to you or someone else?

A. Reported to me immediately.

Q. Were any reports made, sir?

(Testimony of Melvin E. Strock.)

A. No, sir.

Mr. Russell: Thank you very much. You may cross-examine. [232]

Cross-Examination

Mr. Collett: Q. What was the source of your knowledge of the contents of the cart or trailer?

Mr. Russell: As to which I am going to object as being outside the scope of the direct examination, if the Court please. I inquired here solely with respect to the seals.

The Court: The objection will be overruled.

A. What was the question, please?

(Record read.)

A. Well, from the document.

Mr. Collett: Q. What document?

A. The freight bill presented to us by Wells Cargo, or from any other carrier.

Q. And that was your knowledge of the contents; and from that bill what did you do?

A. From the bill, then we copied from their bill to our freight bill.

Q. And you were familiar with these various freight bills which constitute the government's exhibits 4 through 22; I show you government's exhibit No. 4. That is a freight bill, is it not?

A. That is a freight bill.

Q. Prepared by your office in Oakland?

Mr. Russell: I might interpose an objection—

The Court: Prepared by who? [233]

(Testimony of Melvin E. Strock.)

Mr. Collett: Q. Prepared by your office in Oakland?

Mr. Russell: If the Court please, I don't wish to be constantly interrupting here, but I deem that—I suggest that all this line of inquiry goes beyond the scope of the direct examination, in view of the fact that I limited it to the physical vehicle. We are now getting into other matters of handling. Might it be understood that I have a standing objection to that, to avoid—

The Court: Let the record so show. It will go in subject to your motion to strike again, so that if it appears necessary to you, you may renew your motion.

A. This freight bill wasn't made in Oakland.

Mr. Collett: Q. Where was the freight bill made?

A. Well, No. ones, that is an eight, is the digit, the code, and there is not an—this is not an Oakland freight bill.

Q. Where would that freight bill have been made? A. Made in Tacoma, Washington.

Q. By whom? A. By our company.

Q. Show you government's exhibit No. 5 Where was that freight bill made?

A. That was made in Oakland, California.

Q. And the information thereon was obtained from where?

A. From the Wells Cargo freight bill.

Q. Is there a government bill of lading along with that [234] freight bill?

(Testimony of Melvin E. Strock.)

A. Yes, there would be a government bill of lading. It would have to accompany the shipment.

Q. And the Wells Cargo—is that it, Wells Cargo?
A. Wells Cargo.

Q. Wells Cargo freight bill and the government bill of lading?
A. Right.

Q. And were they checked before you prepared the freight bill?
A. That's right.

Q. That you have as government's exhibit 5?

A. Correct.

Q. And all these shipments you have testified you have checked and you are familiar with them, which constitute the counts which are involved here, and from which the bills are included in government's exhibit No. 3 through 22? That's true—you so testified in answer to your counsel's question?
A. Right.

Q. That you have familiarized all those shipments moved from Oakland to Tacoma or Seattle, is that correct?

A. Or various destinations.

Q. And the charges were paid on those bills?

A. That I would not know, sir.

Q. I see. you don't know that. Are you familiar with the matter of charges? You prepared on each of those bills the charge to be made, is that so? [235]

A. That's right.

Mr. Russell: I am going to object to that on the ground it is indefinite and uncertain. Counsel, are you referring to the particular witness or to the company when you say "you"?

(Testimony of Melvin E. Strock.)

Mr. Collett: Well, I think I—I don't think there is any question about it.

Q. I am speaking of you in the preparation of the bill at Oakland, your bill, a sum of money is placed in the column for freight in government's Exhibit No. 3. That says \$737.20, is that right?

A. Yes, \$737.20.

Q. And that charge is determined how?

A. By a tariff.

Q. By a tariff? A. Yes, sir.

Q. And with regard to explosives which are A or B, is there any difference in the charge that is made, as opposed to, say, general commodities?

Mr. Russell: To which I am going to object, if the Court please, here, on the ground that it is outside the scope of the direct examination. There is—and I pose here the objection anew, in spite of my standing arrangements, because there is no showing that this man has familiarity with the basic facts.

The Court: The objection will be overruled. If you know, [236] you may answer. Is there any differential in the charge for those two?

A. Well, we have, Your Honor, a tariff that we follow that is issued by the Tariff Bureau in Portland, Oregon.

The Court: I understand that. Do you know of your own knowledge, is there any differential in relation to the charge on those two items?

The Witness: No, sir, I believe they are the same, identical, as far as the charges go, sir.

(Testimony of Melvin E. Strock.)

Mr. Collett: Q. By the same—you mean as compared to what?

A. Well, as any other freight or commodity.

Q. Well, is there any additional charge for the transportation of dangerous materials or explosives, as opposed to general commodities?

A. Not to my knowledge.

Q. Not to your knowledge?

The Court: We will take a recess.

(Recess.)

Mr. Russell: If the Court please, it has been called to my attention during the recess that I may have misspoken myself in my statement, and I wish to clarify it, if there is any misunderstanding. I was commenting in my motion with respect to the failure of the government to tie in the bill of lading to the shipping documents here, and I made some [237] statement the exact language of which I do not recall. It might have been considered that I was withdrawing from my previously stated position, to the effect that these documents, as a document, the copies were taken from records which were found in our file, and that, just in case there would be any misunderstanding, I wanted to be sure we were clear on that.

Mr. Collett: Q. Mr. Strock, as a matter of fact, none of the shipments which are involved in the information here, the charges that were made, the charges were not determined from the general commodity tariff, is that true?

(Testimony of Melvin E. Strock.)

A. We have a government quotation tariff, if that is what you are referring to.

Q. Was that in accordance with a bid on a government contract for shipment?

A. No, not the way I understand it. It is just a regular tariff that we have. It's published by the bureau.

Q. By which bureau?

A. By the Pacific Tariff Bureau, in Portland, Oregon.

Q. Do you know whether or not the charges that were made were in accordance with the contract with the government, and particularly the Sierra Ordnance Depot at Herlong, California, pertaining to the charges that have been made on all of the shipments emanating from the Sierra—

A. I wouldn't know that

Q. You don't know that? [238] A. No.

Q. Now when the freight bill in each instance was cut, did you make any effort to ascertain whether or not all of the items that were set forth thereon, particularly referring to the government's exhibits numbers 3 through 22, were permitted as a matter of transportation, in accordance with the certificate of the Interstate Commerce Commission, for the transportation of commodities?

A. Well, we were tendered the shipment by Wells Cargo, actually—

Mr. Collett: Well, if the Court please, I direct the witness' attention to the question, that the answer is not responsive.

(Testimony of Melvin E. Stroock.)

The Court: Reframe your question.

Mr. Collett: Q. Did you ascertain in the cutting of the freight bill and the enumeration or the setting forth of the various articles which were being shipped in the respective cars which are included in government's exhibits numbers 3 through 20 whether or not the company, the defendant herein, had the authority in accordance with its certificate, government's exhibit No. 1, certificate of public convenience and necessity,—

Mr. Russell: To which we object at this time, if the Court please—

Mr. Collett: I haven't finished the question, if the Court please. [239]

Q. (Continuing) —to transport in accordance with that authority the various articles or commodities which are listed in that freight bill?

Mr. Russell: To which I would like to interpose an objection on the grounds that there has been no proper foundation laid to show this witness is a man familiar with that, or that that is within the scope of his knowledge.

The Court: The objection is overruled. If you know, you may answer.

A. Well, the only thing that I know, Your Honor, is that we haul the freight and it is tendered to us by any shipper, and we are a common carrier, and as far as the certificate is concerned, I don't know too much about that. I know that I am instructed to pick up and deliver freight for our company.

(Testimony of Melvin E. Strock.)

Mr. Collett: Q. Regardless of whether or not there is any authority to transport it or not?

A. Well, that, as I say, I didn't know anything about the authority part. I do not know.

Q. You know nothing about the authority of the defendant in accordance with its certificate?

A. I know that we have a permit to operate over certain highways, interstate permit, and a certificate to operate out of the Bay Area to the north-west.

Q. And you are the district manager of the West Coast, of the Oakland office? [240]

A. I am.

Q. And you know nothing about the restrictions contained in that certificate as to the commodities that may or may not be transportable?

A. Well, since you mention it, we have restrictions, because it was mentioned right here in the court. There are restrictions, naturally.

Q. But prior to the time you heard it in this court, you had no knowledge?

A. I would say that we were restricted on certain commodities, that I do have knowledge of certain commodities, but I don't say that I had it specifically on one certain item, like I know that household goods, we were restricted on that. And on live stock. But not on government freight.

Q. Were you familiar with a restriction to except dangerous explosives?

A. There is such a restriction in our certificate, yes.

(Testimony of Melvin E. Strock.)

Q. And you were familiar with the government's exhibits Nos. 23 and 24, the motor carriers explosive and dangerous articles tariff No. 6 and No. 7?

A. No, I am not familiar with that tariff.

Q. You are not familiar with that tariff; are you familiar with the distinction between A, B and C types of explosives?

A. No, sir.

Q. At that time you are not familiar with them?

A. Well, the only thing I have heard since I have been in the court room, I have heard you gentlemen speaking about the difference in explosives, whether they are dangerous or not dangerous.

Q. And prior to that time you had no knowledge of your own?

A. No knowledge.

Q. These bills of lading and the Wells Cargo freight bills came into your office in Oakland, and particularly calling your attention to government's exhibits Nos. 3 to 22,—freight bills were cut therefrom, the items were set forth, you had no knowledge as a district manager in charge of the Oakland station?

A. That's right.

Q. As to whether or not the company had authority to transport any of those articles?

A. As I say, the government—we haul freight for the government every day, and I am no explosives expert. The only thing I know is that we have evidently been hauling this ammunition, as you call it. I don't know whether it is dangerous or not, because I actually never did see it.

Q. Never did see what?

A. The commodity.

(Testimony of Melvin E. Strock.)

Q. Well, you did see the freight bill, didn't you?

A. The freight bill is the only thing that I did see.

Q. Well, you know it is listed on there, the commodities that were listed there? [242]

A. Yes, that is true.

Q. Wasn't there any question in your mind as to whether or not any of those items might be A, B, or C types of explosives in tariffs Nos. 6 and 7?

A. There has never been any question in my mind regarding that, no, sir.

Q. No question in your mind that black powder, hand grenades, explosive projectiles for cannon, and so forth, might be classified A or B in this tariff?

A. No, sir.

Q. That they might be dangerous explosives?

A. No, sir.

Q. You made no effort whatsoever to ascertain——

A. No, sir, because as I said, I did not see the commodity. They were sealed vans.

Q. Well, doesn't the term "fireworks special", explosive projectiles for cannon, black powder, hand grenades" in your mind raise any question as to whether or not they are dangerous explosives?

A. Well, I would say there is a difference between fireworks and explosives, yes.

Q. Well, leave the fireworks out; how about the explosive projectiles for cannon? Detonating fuses, rocket ammunition with empty projectiles, ammunition for cannon with explosive projectiles? [243]

(Testimony of Melvin E. Strock.)

A. To me, that isn't dangerous.

Q. What was the answer?

A. To me, as I say, I don't know anything about explosives, and to me, as I say, it isn't dangerous.

Q. Have you used this motor carriers dangerous articles and explosive articles tariff No. 23 and 24?

A. We have that tariff in our file, evidently, yes.

Q. You evidently have it; haven't you ever seen it before? A. No.

The Court: What's that, sir?

The Witness: I did not see it, sir. I don't see that tariff. You see, we have a rate department that takes care of our tariffs in our office.

Mr. Collett: Q. And as a district manager in charge of the office in Oakland, you say you are not familiar with this tariff? Have you seen it before you came into the court room?

A. I have never seen it before.

Q. You have never seen this before you came into this court? A. I have not, no, sir.

Mr. Collett: No further questions.

Mr. Russell: I have just a few questions.

Redirect Examination

Mr. Russell: Q. Now, Mr. Strock, did you at any time, or did any member of your organization to your knowledge, in Oakland, ever have an opportunity to check the contents of [244] these vehicles against the freight bills that Wells Cargo may have given you, or the bill of lading, to check physical contents against those documents?

(Testimony of Melvin E. Strock.)

A. We were never permitted to.

Q. Do you have an opportunity to check the commodities against the freight bill when you handle freight for private persons? A. We do.

Q. What do you do in that regard?

A. Well, a shipment that is picked up by us or delivered to us, the freight is loaded in a van and actually we physically handle it across the dock, load it in a van. We see the commodity and then it is billed, our bill is cut, similar to these bills which you have in exhibits.

Q. At any time is the merchandise which is actually going in the van checked against any records which you may have, bill of lading or otherwise?

A. Each individual shipment is checked, the commodity is checked against the bill of lading when it is loaded on the vehicle. That's our regular procedure, sir.

Q. Did you have an opportunity to do that at any time with any of the loads moving out of Herlong? A. No, sir.

Q. Why was that?

A. Because they were sealed by the government and we were not permitted to break that seal. [245]

Q. Can you tell me, sir, has your company handled government traffic out of Herlong other than these shipments, to your knowledge—other than the shipments that are specifically here involved? A. Not to my knowledge.

Q. These were the only shipments that you handled out of Herlong, is that your recollection?

(Testimony of Melvin E. Strock.)

A. Oh, we have handled— I mean, we have handled shipments other than as on exhibit here, yes, sir.

Q. Do you handle or control anything in connection, in your office do you do any of the work in connection with pricing, tariffs, in connection with your company?

A. No, that is in our rate department; we have a rate department.

Q. And do you have someone at Oakland in charge of that rate department? A. We do.

Q. And to whom are they responsible ultimately in your organization?

A. To the general traffic department and the district manager.

Q. And where is the general traffic department located? A. In Seattle, Washington.

Mr. Russell: That is all I have. Thank you, Mr. Strock.

Recross Examination

Mr. Collett: Q. Mr. Strock, calling your attention to [246] Title 49 of the code of federal regulations, Section 77823, provides for marking of motor vehicles and trailers other than tank motor vehicles; which provides that every motor vehicle transporting any quantity of explosives, class A, poison gas, class A, or radioactive material, poison, class D; requiring red radioactive materials label; every motor vehicle transporting 2,500 pounds gross weight or more of explosives class B, flammable liquids, flammable solids or oxidizing materials, cor-

(Testimony of Melvin E. Strock.)

rosive liquids, compressed gas, class B, poison and tear gas of 5,000 pounds gross weight or more, of two or more articles of these groups, shall be marked or placarded on each side and rear of a placard or lettering in letters not less than three inches high on a contrasting background as follows:

“Explosives class A, explosives, explosives class B, dangerous.”

Do you mean to tell me that you didn't know whether or not any one of the trucks going out of your office should or should not be placarded in accordance with that section?

A. All equipment that is on exhibit here was placarded by the United States Government.

The Court: He asked you if you had any knowledge.

The Witness: That they were placarded, is that what you want to know?

Mr. Collett: (To the reporter) Read the question, Mr. Reporter. [247]

(Record read.)

A. I know this, that we handle anything—if we handle anything——

The Court: It isn't what you handle; are you familiar with that regulation or that law which he read?

The Witness: Well, sir, Your Honor, the only thing that we have handled that comes under that category is here on exhibit, and of course they were

(Testimony of Melvin E. Strock.)

placarded. As I remember, that is all we have ever handled, to my knowledge, and that's the reason why I am answering the way I am.

Mr. Collett: Q. Did you ascertain in each case the shipments involved in government's exhibits 3 through 22, whether or not the commodity which you set forth in your freight bill called for that car to be placarded in accordance with that regulation?

A. Since the army—I am going to answer it this way: since the army loaded the vehicle, they must placard it to meet with the regulations set forth by the Interstate Commerce Commission. And all the vehicles that we haul are pulled out of our terminal, was placarded according to that regulation.

Q. How do you know?

A. Well, when you ask how do I know—perhaps I understood it that the army would not ship or send over the highway without it not being properly placarded.

Q. Do you mean to tell this court that there is no [248] responsibility on the part of this carrier in transporting dangerous explosives on the highways of the United States and the State of California and every other state, if the army did not put that placard on there?

Mr. Russell: To which I am going to object, if the Court please—assuming facts not in evidence, and it is argumentative.

The Court: He may answer. The objection will be overruled.

(Testimony of Melvin E. Strock.)

A. Well, I know one thing. If the army didn't placard it, we wouldn't haul it. It wouldn't have gone out of our yard.

Mr. Collect: Q. Well, how would you know whether or not you should haul it?

A. Well, as I said before, if the army gave us a box loaded with ammunition, or whatever the commodity was, and required a placard, they would certainly apply it before they would turn it over to us.

Mr. Collett: I ask that be stricken as not responsive to the question, if the Court please.

The Court: It may go out. Not responsive. Re-frame your question. Proceed as rapidly as we may.

Mr. Collett: Q. Mr. Strock, are you familiar with the provision of 18 USCA 35, which fixes a penalty of a thousand dollars for failure to properly placard a car, trailer, carrying dangerous explosives on the highways of the United States?

A. No, I am not familiar with that, no, sir. [249]

Q. You are not. What do you consider to be the responsibility of the company with regard to complying with the laws in the transportation of dangerous explosives on the highways of the State of California and the United States?

Mr. Russell: I would like to object to that, if the Court please, on the grounds that there has been no proper foundation laid to show the qualification of the witness, that it is outside the scope of the direct examination.

The Court: He is a manager.

(Testimony of Melvin E. Strock.)

Mr. Russell: A local manager in Oakland, yes, Your Honor.

The Court: Yes; objection overruled. He may answer.

Mr. Russell: Do you have the question?

The Witness: I haven't.

The Court: Read the question, Mr. Reporter.

(Record read.)

A. We certainly would comply with the law and nothing would depart from our station or what you call our station, our terminal, unless it was properly placarded to move on the highway in the state, in safety.

Mr. Collett: Q. What did you do to assure that you were in compliance with the provisions of Title 49, Code of Federal Regulations, Section 77823, relating to the placards to be placed upon trailers or semi-trailers being transported by the defendant West Coast?

A. Our traffic department, sir, would instruct us on that, [250] and we would follow their instructions and see that that particular vehicle was placarded properly from those instructions.

Q. Do you know that all of the cars that were transported involved in Defendant's Exhibits 3 through 22 were placarded? A. Yes, sir.

Q. In accordance with that regulation? Do you know that? A. Yes, sir.

Q. How do you know it?

A. As I say, we asked our traffic department to

(Testimony of Melvin E. Strock.)

give us the rules and the instructions how to see whether or not they were properly placarded, and we followed those instructions and did not roll the equipment out of the yard until they were followed.

Q. Well then, you are familiar with the regulations pertaining to class A and class B explosives?

A. No, I wouldn't say that. Although as I say, we would follow, if you were handling a load like this, you have an exhibit here, and if there were not placarded properly, and the traffic department said there was something wrong with it, the box wasn't properly marked, we certainly would see that it was marked properly before it left our yard.

Q. Now calling your attention to explosives, projectiles for cannon, you set forth on your freight bill that the car consisting of explosive projectiles for cannon is being transported; what sort of a placard would you put on? [251]

A. Well, I know that there is a placard that is square, I am sorry that we haven't one here. But it is a square, it is about, I would say, two foot square, marked in red, "Explosives". And that's put on the vehicle on the rear doors, the sides, and if I remember correctly, the front of the vehicle. That placard is furnished by the government, they tape it on themselves. They apply the placard. We do not. But in case it wasn't placarded per the instructions, and the tariff, or from our traffic department, we would go to the Army Ordnance Depot in Oakland and ask for a placard to replace the one that was missing.

(Testimony of Melvin E. Strock.)

Q. In government's exhibits 3 through 22, was there any question as to the manner in which any one of the trailers carrying the commodities listed on your freight bills, as to what placards should go on the trailer? A. Not to my knowledge.

Q. And when you refer to the tariff and regulations, are you referring to government's exhibits 23 and 24, tariffs Nos. 6 and 7?

A. As I said before, sir, we go to the traffic department and ask for instructions. If they are properly placarded, or whether they are—whether they are where they are supposed to be. And they instructed us and we follow those instructions.

Q. And when you use the term "explosives" as to the particular item I refer to, explosive projectiles for cannon, that is [252] referred to in 49 Code of Federal Regulations 77823, explosives class A, explosives. It calls for placards on each side and rear, with a placard or lettering in letters not less than three inches high on a contrasting background as follows, is that right?

Mr. Russell: To which I object on the ground that there is no proper foundation laid to show the witness is familiar with the contents of the document counsel is reading. He is now asking him something which is more of a statement in argument.

The Court: If he knows, he may answer it. The objection will be overruled.

A. Well, I don't believe I—I don't know that.

Mr. Collett: Q. You don't know that when the

(Testimony of Melvin E. Strock.)

explosives is put on placard, with explosives, in the manner in which you described it on a trailer, that that means contains explosives class A?

A. I know when the army gave us, Wells Cargo gave us a box from Herlong, they were placarded with an explosives on them, and I know that—they were on the rear doors and they were properly applied, so we hauled the boxes, because we knew then that they were meeting the regulations.

Q. How did you know?

A. As I said before, we asked for the traffic department and they informed us it was all right.

Q. Well, you personally—how did you know whether the term “dangerous” should go on there, as opposed to “explosives”?

A. Well, you have a freight bill from Wells Cargo that describes the merchandise. You are certainly not going to pull it out of the yard without it being properly placarded.

Mr. Collett: No further questions.

The Court: Step down.

(Witness excused.)

Mr. Russell: I have one question.

(Witness resumes stand.)

Further Redirect Examination

Mr. Russell: Q. Now counsel has been asking you a number of questions relating to these regulations and to the documents exhibited here, these regulations; so that the record may be clear, I point to volumes in front of him and these two

(Testimony of Melvin E. Strock.)

documents. Does your company give you any regulations as a part of their own company regulations that deal with the way you should handle different kinds and classes of merchandise?

A. They certainly do. We follow our—we have the instructions what to do.

Q. Do you recall whether or not in those instructions there are any instructions relating to the physical handling of explosives? A. Yes, sir.

Q. Now when you say, when you refer to your traffic department, [254]

A. That is what I am referring to.

Q. —what generally is the function of your traffic department at your place of business?

A. Well, they have all the tariffs and the classifications, they rate all of our freight bills, and if there should be a freight bill that comes across their desk, if there was any question about it whatsoever, they would tell us about it, the loading or the unloading crew, or your supervisor, so he would realize that there was something radically wrong with that particular shipment.

Q. May I ask you, sir, exhibits 3 through 22, these documents—to the extent that they show preparation in Oakland, would they be physically prepared in the traffic department?

A. They would be.

Q. If your office at Oakland undertook to maintain tariffs, would the customary place for those be in the traffic department? A. That's right.

Mr. Russell: That's all. Thank you, Mr. Strock.

(Testimony of Melvin E. Strock.)

Mr. Collett: No further questions.

The Court: Step down.

(Witness excused.)

Mr. Russell: If the court please, I would like to call Mr. Shepherd. [255]

I. W. SHEPHERD

called as a witness on behalf of the defendant, sworn.

The Court: Q. State your full name to the court for the record.

A. I. W. Shepherd, S-h-e-p-h-e-r-d.

Q. Where do you reside?

A. Seattle, Washington.

Q. Your business or occupation?

A. I am secretary and general traffic manager of West Coast Fast Freight, Inc.

Q. How long have you been so engaged?

A. I have been with the company since they were first organized in 1944, and occupied my present position with the company since April of 1946.

Q. What is the nature of your work?

A. I have complete charge of all matters affecting the company, publication of tariffs, claims and related matters.

The Court: Proceed.

Direct Examination

Mr. Russell: Q. Do you have, Mr. Shepherd, under your direct management and control and supervision, the matter of applying by your com-

(Testimony of I. W. Shepherd.)

pany for certificates or seeking new rights, if any such are sought? A. Yes.

Q. Are you the person that handles the arrangements made for [256] legal counsel and the necessary steps for the preparation of such cases?

A. Yes.

Q. Do you in connection with your duties as a general traffic manager have any occasion to make general supervision over the records to determine and follow to some extent what traffic is flowing over the lines of your company? A. Yes.

Q. What generally do you do to keep in touch with that matter?

A. I have an audit department set up in the general office which makes spot or periodic audits of freight bills of various stations. They may audit one particular station's billings today, they may go back and audit that same station again next week, it might be three weeks before they get around to performing another audit. It might cover an audit, a period of one day—it may cover an audit of a period of a week. But in that manner we keep to a certain degree abreast of the traffic that is moving over our system.

Q. Are those audits reported to you?

A. They are.

Q. Approximately how many stations was your company operating over its system in the period between September of 1950 and May of 1951?

A. At that time I think we had in the neighborhood of twelve [257] or thirteen company stations

(Testimony of I. W. Shepherd.)

plus in excess of thirty commission agency stations.

Q. Do you have any ideas of how many vehicles the company was operating at that time?

A. We were operating in excess of 150 over-the-road power units and in excess of 200 over-the-road trailers or vans.

Q. When you speak of over-the-road equipment, could you tell us what you are talking about?

A. I am talking about line-haul equipment or the vehicles that travel from station to station or terminal to terminal with freight, moving from city to city, as distinguished from the small or pick up and delivery units which are used exclusively at the consolidation and distribution points for the purpose of picking up and delivering of freight.

Q. Are you able to give me any idea of what the volume of the number of shipments was, approximately, that you were handling in September in the aggregate, your company? Do you have any such information?

A. I could give an approximation.

Q. To the best of your recollection, what would have been that, approximately?

A. At that time it would approximate somewhere in the neighborhood of between 40,000 and 60,000 shipments a month.

Q. Now I would like to direct your attention back to the period prior to September of 1950, just prior, and ask whether [258] or not there came to your attention the fact that any traffic was begin-

(Testimony of I. W. Shepherd.)

ning to move over your lines out of Herlong, California?
A. Yes.

Q. Do you know whether or not your company had submitted to the United States government army authorities or military authorities in Washington a bid to transport military traffic at about that time?

A. Well, we don't refer to them as bids, we refer to them as Section 22 quotations—quotations submitted under Section 22 of the Interstate Commerce Act, which provides for free or reduced transportation.

Q. Did you submit such a quotation to the government?
A. We did.

Q. Can you tell me whether or not that was accompanied with a copy of your certificate, a copy of which is also here in evidence as exhibit 1?

A. I don't recall that the certificate was or was not submitted at that same time, but a copy of the certificate and other pertinent matter relating to the company's operations were submitted.

Q. And to whom?

A. It was submitted to the—I don't recall the specific name of the division. I think they call it the OCT, office of the—

Q. Office of the Chiefs of Transportation? [259]

A. That is it.

Q. And where are they located?

A. They are located in Washington, D. C.

Q. Do you know from the standpoint of arranging and handling traffic matters of your company,

(Testimony of I. W. Shepherd.)

whether or not the government requires that you make arrangements for handling government traffic with the Washington offices? A. Definitely.

Q. Was that the standard procedure at that time?

A. Yes, you must make arrangements with the Washington offices.

Q. This quotation that you have mentioned as giving; was that restricted in any way to explosive items or did it include other products?

A. It covered other products.

Q. Did it describe products specifically, do you recall?

A. The quotation, as I recall it, covered the description of freight, and I do believe there were a few exceptions, which exceptions were not tied to the operating authority but were tied to the fact of the lightness or lack of density of traffic. The light articles, or those which did not have much density per cubic foot, were excepted from the quotation, and the quotation was not applicable on those commodities.

Q. And did you at or about that time furnish a copy, did I understand, of your certificate to that authority in Washington?

A. Yes. In fact, the operating authorities were in their [260] possession a considerable period of time prior to the submission of the Section 22 quotation.

Q. Let me ask you, sir, during that period of time and continuing, have you had occasion to have

(Testimony of I. W. Shepherd.)

contact with that office from time to time on matters other than this section 22 authority?

Mr. Collett: If the Court please, the Court has allowed great latitude——

The Court: We are going afield.

Mr. Russell: I am simply asking the question for the purpose of demonstrating that this was not an isolated instance, to develop the fact, the familiarity of the witness with this matter. I won't pursue it further. That was the purpose of the question.

The Court: Very well.

A. Yes, we have had subsequent deals with the OCT.

Mr. Russell: Q. Mr. Shepherd, to your knowledge following the submission of that quotation, did your company begin to receive freight coming to your lines which originated from Herlong?

A. Yes.

Q. Did you undertake to make any investigation or examination of the character and type of that freight after it came to your attention that such freight was moving? A. Yes. [261]

Q. Your offices are located in Seattle, is that right, sir? A. Yes.

Q. Did it come to your attention at that time that certain items of an explosive character were being moved? A. Yes.

Q. Were you aware, sir, of the fact that your certificate contained certain language with respect to explosives, specifically calling attention to that by way of exception or otherwise?

(Testimony of I. W. Shepherd.)

A. I was.

Q. What did you do at the time that matter came to you to investigate the situation?

Mr. Collett: I object now as to what matter—

The Court: The matter is here in question.

Mr. Russell: What did you say?

The Court: The matter is here in question.

Mr. Russell: Well, if the Court please, the government has offered in evidence the proceeding, the pending proceeding to the Interstate Commerce Commission, as exhibit 2, I believe—certain portions of that record, which shows that it was filed in October of 1950, initially. I conceive that the only possible materiality of that document to this proceeding is an attempt to show that it is willful and knowing and that when we said we went in and said we needed a certificate to transport these, that we knew we didn't have it, and this line of [262] inquiry is intended to develop the historical sequence of events which produced that application, in order that it might explain the application and why it was filed, and its purpose.

The Court: Well, I will give him an opportunity to get a record on it. The objection will be overruled. Proceed.

(Record read.)

Mr. Collett: Well, I object further; that question, at the time that matter,—that is ambiguous, not specific.

The Court: Identify what you mean.

Mr. Russell: Q. I believe I had asked you in

(Testimony of I. W. Shepherd.)

the previous question if it came to your attention that some explosive items or items that appeared to be explosive in character were moving over your lines out of Herlong. I had asked you that, and you said yes, as I understood it. Now I asked you what you had done to investigate that situation.

A. I analyzed our certificate and the regulations of the Commission to——

Q. What regulations are you referring to, sir?

A. I am referring to regulations with respect to the transportation of explosives and other dangerous articles.

Q. I call your attention in order that we might understand,—would that be the document which appears here as exhibit No. 23?

A. I examined both documents. Well, at that particular time, I believe it is in the record as government's exhibit 24. [263]

Q. Exhibit 24, and——

Mr. Collett: At this time, tariff No. 6.

The Witness: Tariff No. 6.

Mr. Russell: Q. And were there supplements to this document at this time that I am speaking of now, August or September of 1950?

A. Yes, there were.

Q. Would you proceed to explain to me what was done?

A. I examined the regulations of the Commission, to which I just referred, to determine to the best of my ability what commodities we could and what commodities we could not haul under the cer-

(Testimony of I. W. Shepherd.)

tificate which had been issued to us by the Interstate Commerce Commission.

Q. At the time you began your investigation, did you have any knowledge as to whether or not the regulations in the past, particularly the sections 73.5 and following, contained any reference to the words "dangerous", "less dangerous" and "relatively safe"? Had you had that knowledge?

A. Yes.

Q. What did you find when you undertook your investigation at this time, that you now are speaking of?

A. I found that regulations had been issued superseding and cancelling those particular sections.

Q. Did you take the matter of the interpretation of your certificate up with legal counsel or others? [264]

A. I did.

Q. With whom did you take it up?

A. Mr. William B. Adams, attorney at law, Portland, Oregon.

Q. Did you request of Mr. Adams an interpretation of the certificate?

A. Yes.

Q. Did he undertake to define for you or could he define for you what you could or could not haul?

Mr. Collett: If the Court please, I am going to object at this time; it is calling for the opinion and conclusion of some individual, it is the province of this court to determine whether or not the violations have been committed in accordance with the evidence and the information that is on file.

(Testimony of I. W. Shepherd.)

Mr. Russell: I feel that the inquiry is material. I do think that there is an objection to the manner in which I framed my question, and I would like to withdraw it in order to put it a different way.

The Court: Surely.

Mr. Russell: Q. I would like to ask you, did you receive from Mr. Adams pursuant to that request any advice which set forth for you an opinion of counsel as to what you might or might not be allowed to haul under that certificate?

Mr. Collett: If the Court please, I object again that it is calling for an opinion.

The Court: Would you give me the substance of the [265] certificate we are discussing?

Mr. Russell: I was speaking with respect to the portions here that are involved, "except dangerous explosives." I believe I had asked the witness previously if he had inquired from counsel as to what that might mean.

The Court: Assuming he was misled, where would we find ourselves?

Mr. Russell: I think it would bear very heavily upon the question of willful and knowing character of these violations.

The Court: For that limited purpose I will allow it.

A. Mr. Adams, the same as myself, could not determine with any degree of definiteness that we could or could not haul under the term "dangerous explosives".

Mr. Russell: Q. What was Mr. Adams' advice

(Testimony of I. W. Shepherd.)

as to the course of conduct which you should pursue?

Mr. Collett: Again object, if the Court please, as to his advice, as calling for an opinion and conclusion.

The Court: The objection will have to be sustained.

Mr. Russell: Q. At about what time did you seek the advice of Mr. Adams?

Mr. Collett: I object, if the Court please; irrelevant and immaterial.

The Court: Let him fix the time, if he recalls.

A. The time was either in September or very early part of October of 1950. [266]

Mr. Russell: Q. Did your company employ Mr. Adams to file the application which is reflected in exhibit 2? A. We did.

Q. What was the purpose of the company in undertaking to file that application? What caused you to file it?

Mr. Collett: Well, I object, if the Court please; the document speaks for itself. The language there—it is an application for an extension of their authority and it is in evidence.

The Court: We are not here—

Mr. Russell: Well, if the Court please, with some familiarity with the forms which the Interstate Commerce Commission provides for filing applications, I suggest that I should be allowed to inquire somewhat further, perhaps, if not in this way, in some other way, to develop the purpose of

(Testimony of I. W. Shepherd.)

the application. It is after all a printed form that we are required to fill in and so much space, and I think I should be—it is pertinent to this proceeding on the willful or knowing element, as to why this application was filed.

The Court: Well, we went so far afield on both sides of this case, I will allow it in the interest of time. He may answer.

A. Well, I stated at the outset of that case, in my testimony, I think very explicitly, the reasons for filing that application. [267]

Mr. Russell: Q. Did you testify in that proceeding?

A. I testified in that proceeding. [268]

* * * *

I. W. SHEPHERD

resumed the stand.

Mr. Russell: The Court will recall that just prior to the recess I was about to read certain restricted portions from the transcript. I will read from a copy, so that counsel can follow with the original. I am referring to page 16 of the transcript in the matter of docket No. M.C.55905, Sub 34, date of April 26, 1951. This is question——

The Court: This was what, an application for whom?

Mr. Russell: The application before the Interstate Commerce Commission, the documents, part of the documents of which are the subject of exhibit 2.

The Court: And the date?

(Testimony of I. W. Shepherd.)

Mr. Russell: The date of the testimony is——

The Court: Before this action was brought?

Mr. Russell: Was before this action was brought.

The Court: In anticipation of this action?

Mr. Russell: If you will recall, if the Court please, it is the application that was filed in October of 1950. The hearing was actually held, in order that the Court may have the full picture,—it was set for hearing by coincidence, I am [270] sure it is just a matter of coincidence, because the Commission sets those, between the first time that Mr. Harrison called at our office and the second time that Mr. Harrison called at our office and the second time, just shortly prior to the second time. So that the Court may have the sequence of events. But the application was originally filed in October of the previous year.

Mr. Collett: Well, if the Court please, I am going to object. It seems to me the witness is here, this is testimony of this witness. I don't see——

The Court: Well, what are you objecting to, because the Court made an inquiry?

Mr. Collett: The Court made an inquiry?

The Court: Yes.

Mr. Collett: Well, I don't understand the Court has inquired as to the contents of the transcript.

The Court: No, I wanted to know what led up to this hearing.

Mr. Russell: He was asking——

Mr. Collett: Well no, there hasn't been any question. I submit, if the Court please——

(Testimony of I. W. Shepherd.)

The Court: There is nothing before the Court at all. Let's proceed.

Mr. Russell: I was trying to give the dates from Exhibit 2. The questioning is by Mr. Adams and this is the question—the witness on the stand, and the transcript, a portion from [271] which I am reading, is from the testimony of Mr. Shepherd:

“_____

Mr. Collett: Well, now, if the Court please, I am going to object to this as putting into evidence something that there is no——

The Court: He says it is two pages. I indicated to him before recess that I would give him a record on it.

Mr. Collett: Yes. Let the record show I am making my objection.

The Court: Let the record so show.

Mr. Collett: Very well.

Mr. Russell: (Reading):

“Q. Now what motivated or what caused the filing of this application?

“A. Requests from various shippers, primarily military installations, to provide service over our routes, was one of the reasons. Another one of them was our desire to clarify our operating authorities, enable us to know what we could transport and where, and eliminate the confusion amongst our own employees as to what could be handled and what couldn't be handled.”

There follows then a series of objections, and then I am turning——

(Testimony of I. W. Shepherd.)

Mr. Collett: Well, at this time I will move to strike [272] that as being wholly irrelevant and immaterial, whether or not an employee was confused or not. It is self-serving, it is irrelevant, it is immaterial.

The Court: This testimony, as I remember it, is going in limited to the element of willfulness, and for that purpose only. Proceed.

Mr. Russell: The next portion to which I direct attention is on page 44 and 45 of the transcript, the cross-examination of Mr. Shepherd by a Mr. Schaeffer?

The Court: Who is Mr. Schaeffer?

Mr. Russell: He was the attorney representing a competing motor carrier.

The Court: All right.

Mr. Russell: (Reading):

“Q. Now your company is a party to the American Trucking Association——”

Mr. Collett: That is line 14, is it not?

Mr. Russell: My copy is not lined. Is line 14 correct, sir?

“Q. Now your company is a party to the American Trucking Association’s explosive tariff, is it not?”

Mr. Collett: Page 44, line 14.

Mr. Russell: Thank you.

“A. It is.

“Q. And doesn’t that tariff list all types [273] of explosives and identify those that are classified as dangerous explosives?”

(Testimony of I. W. Shepherd.)

“A. Not in that terminology.

“Q. Well, what terminology is used?

“A. The classification defines explosives A, B, and C explosives. The classification also provides under rule 73.51 for the non-acceptance and non-transportation of certain explosives, those that are defined as forbidden explosives. It provides under rule 73.52, or names in there, those explosives which are acceptable explosives, defines Class A, Class B and Class C explosives; Class A explosives as being detonating or otherwise a maximum hazard; Class B explosives as being flammable hazard; and Class C explosives as a minimum hazard. It does not use the word ‘dangerous explosives’ anywhere in that definition, and we frankly don’t know whether the dangerous explosives are the explosives that are the forbidden explosives, whether they are A, B, or C explosives, or whether they are all three.

“Q. Well, what does it say in connection with the forbidden explosives? Doesn’t it say that no motor carrier is authorized to handle such explosives over the highway?

“A. That’s right, and we have not handled any of them, [274] the following classification of forbidden explosives.

“Q. Well, what is there about that that bewilders you? Do you think that you are trying to handle forbidden explosives?

“A. No, no, what we want to know is what we can handle, among other things, and to be very

(Testimony of I. W. Shepherd.)

sure that what we do handle we are authorized to handle.”

That concludes near the bottom of page 45, counsel. I realized that there is something, somewhat related here, but I had intended to cut off there because I thought we were getting into the question then of the interpretation by the witness of these classifications, rather than something that might be said to go to the matter of serious intent and willfulness. If there is anything further along this line, you would like me to continue with—

Mr. Collett: No, I don't want you to continue.

Mr. Russell: Mr. Shepherd, I would like to ask you first of all, at the time the particular shipments which are the subject of the counts of the information here actually moved, did you have any direct personal association with those particular shipments to your specific recollection at this time? A. No.

Q. Were you generally at that time in charge and regulating the matters of the traffic department covering the handling of government traffic as well as other traffic? [275] A. Yes.

Q. Let me ask you, sir, in the course of your company's business over the period of since 1945, you have been with them, is that correct, sir?

A. Since 1944.

Q. 1944. Has your company handled military traffic on government bills of lading for the government with some frequency? A. Yes.

Q. Can you tell me whether or not, from your

(Testimony of I. W. Shepherd.)

knowledge of the manner in which government traffic is handled, whether there are ever occasions when the government bill of lading does not accompany the traffic? A. Yes.

Q. What circumstances give rise to that condition?

Mr. Collett: Well, I object, if the Court please; that is immaterial and irrelevant, it is a general question, there is no relation to the matters at issue here.

Mr. Russell: Well, if the Court please, counsel is asking us——

The Court: Does a bill of lading go with the shipment?

Mr. Russell: That is what I am asking, whether there are times when it does not. Counsel's whole case is predicated upon the fact that we have copies certain words from a bill of lading that he hasn't produced, and then seeks to charge us with the fact that we actually hauled the merchandise. Now I [276] am simply seeking to show, find out from this witness, if as a matter of practical fact there are times when that bill of lading doesn't go with the shipment at all.

The Court: Lay the foundation for it. I will allow it. The objection will be overruled.

Mr. Russell: Q. The question was, what gives rise to that situation, if you know?

A. When shipments——

Mr. Collett: Well, the question was what gives rise to that situation.

(Testimony of I. W. Shepherd.)

Mr. Russell: Well, I will withdraw that question and ask it this way:

Q. Under what circumstances——

The Court: Does not a bill of lading accompany.

Mr. Russell: Q. (Continuing)—does the bill of lading not accompany——

A. When a shipment will originate with a carrier preceding the handling by our line, it is not infrequent that the copies of the bill of lading which are tendered to the originating carrier are retained in the files of that originating carrier, with the result that the only documents which we receive are copies of the originating carrier's freight bill. It is also not infrequent that the issuing officer of that bill of lading at the shipping installation will take copies of the bill of lading and put those bills of lading in a sealed envelope to [277] move forward with the shipment as an attachment to the carrier's freight bill, to be opened only by the——

The Court: Forwarding?

A. (Continuing) ——forwarding with the documents of the carrier, to be opened, that envelope to be opened only by the receiving installation. So that he has a copy of the bill of lading issued at the origin station to check the merchandise as it is received at the destination.

Mr. Russell: Q. Let me ask you, sir, when the bill of lading does accompany the shipment without being in a sealed envelope, if that is what is in the envelope, does it ever happen that the physi-

(Testimony of I. W. Shepherd.)

cal document that the originating carrier may have in his possession is in the custody and possession of the driver of the vehicle?

Mr. Collett: I object, if the Court please, that, has it ever happened, that this is all irrelevant.

The Court: Does an absence of the bill of lading from any of these—is there any reference to that in the counts?

Mr. Collett: There is no reference to any count here, if the Court please. He says if it ever happens.

Mr. Russell: I was inquiring—the question, of course, of this witness is, and I think the Court recognizes it is very difficult to tie down specific items when I have already pointed out through this witness that there are many thousands handled.

The Court: Let me inquire, is there an absence of the [278] bill of lading on any of these counts alleged?

Mr. Russell: Well, so far as the record shows, there is none at all. I was about to go into one which has been called to my attention, because of certain letters, where I have found that to be the case, and I will inquire into that at this point.

Mr. Russell: Q. I call your attention to exhibit No. 5, count No. 3, Mr. Shepherd, particularly to a letter or a copy of a letter which is attached to that exhibit, and ask you whether or not during the course of this proceeding you, at my request, made some effort to find the original ship-

(Testimony of I. W. Shepherd.)

ping documents with respect to that particular shipment. A. I did.

Q. Did you cause an investigation to be made for the documents? A. I did.

Q. Have you been able to locate certain of them?

A. I have.

Q. I call your attention, Mr. Shepherd, to four sheets of paper here and also ask that you direct your attention to exhibit No. 5, in the upper right hand corner, where some numbers appear, WV3 and so forth. Would you read those?

A. WV3045106/5.

Q. Do you know what that, on your freight bills, is designed to indicate?

A. That is designed to indicate the government bill of lading numbers or numbers. [279]

Q. I show you the document before and call your attention—to which attention is directed, and ask you whether or not to the best of your knowledge that represents the government freight bill coming into your possession bearing that same serial number or one of them, involved in exhibit 5.

A. This is the shipping order copy of the government bill of lading, No. WV3045105.

The Court: Does that cover this 3?

Mr. Russell: It covers the part, if the Court please; I was just going to develop that. It is a part of the total number of documents that are shown on the bill, not the specific item that is the subject of the count. That was the purpose of offering it.

(Testimony of I. W. Shepherd.)

Q. I would like to call your attention now, sir, to certain other documents that appear to be on a heading of Wells Cargo and ask you if you would explain what those are.

A. They appear to be an original bill of lading issued by Wells Cargo, Inc.

Q. And who is Wells Cargo, Inc.?

A. They are the connecting motor carrier of West Coast, between Herlong, California and Oakland, California.

Q. With respect to that document, are both of the government freight bill numbers shown on their document?

A. They have two bills of lading, one of them shows bill of lading number covering the bill of lading, the shipping order [280] copy of the bill of lading, which I am holding; the other bill of lading covers government bill of lading WV3045106, which I do not have.

Q. Were you able to locate that copy?

A. No, sir.

Mr. Russell: At this time I would like to offer in evidence as defendant's first exhibit in order the series of documents.

The Court: For what purpose?

Mr. Russell: For the purpose of establishing, if the Court please, the fact that the ability or the reliability of depending upon the shipping document cut by the defendant at Oakland is not the final proof of the fact of transportation.

The Court: What is in these documents that has any relation to No. 3, counsel?

(Testimony of I. W. Shepherd.)

Mr. Russell: They are, the last document of Wells Cargo, undertakes to describe by giving the 106 docket number, 14 pallets of rocket ammunition, the remainder of the documents, the actual government bill of lading for which we have, does not anywhere mention the transportation of the products which are the subject of the count of the information.

The Court: Well then, what relation has it to this count?

Mr. Russell: My purpose is, if the Court please, to establish, as I say—I submit that the government here is depending wholly in this case upon a course of business situation, if I [281] may put it that way, and they are going farther than that; they are not relying on the government documents, they are undertaking to rely on a document which we have prepared, and I have developed from Mr. Harrison and counsel has developed to some extent from Mr. Strock the fact that sometimes those documents come from other persons.

The Court: Show me where it has the language that has to do with firearms.

(Witness indicated to Court.)

The Court: In this document?

The Witness: Your Honor, this document does not describe the fourteen boxes of rocket ammunition with which the information is charged. You will find that described on this document (indicating).

(Testimony of I. W. Shepherd.)

The Court: Where? Where is the description? Oh, rocket—I see. (Reading under breath.)

The Witness: That is an abbreviation for the word “ammunition”, Your Honor.

The Court: I think that is notice, myself; however,—

Mr. Russell: Well, if the Court please, I am offering this, as I have tried to keep clear,—I have two problems, and one is of notice and the other one of the proof of the physical fact of transportation.

The Court: Yes, I see.

Mr. Collett: I object.—Excuse me. [282]

The Court: Is that all from this witness?

Mr. Russell: No, I had one or two further questions, if I might.

The Court: Very well.

Mr. Russell: Q. Mr. Shepherd, was the document received—excuse me. Was the document received, if the Court please? I wasn't sure I understood. Was the document received?

The Court: Let the record so show. It may be marked.

The Clerk: Defendant's exhibit A.

(Whereupon document referred to above was received in evidence and marked defendant's exhibit A.)

Mr. Collett: I will note an objection for the record, if the Court please.

The Court: It is admitted over your objection.

(Testimony of I. W. Shepherd.)

Mr. Russell: Q. You have mention, Mr. Shepherd, that there are times your company receives papers accompanying a shipment, or a sealed document or a sealed envelope accompanying shipments. Can you tell me whether or not during the period with which we are here concerned it was the practice to make some notation of an attachment at that time? A. Yes.

Q. I show you government's exhibit No. 16, particularly calling your attention to the word "attachment" appearing at the bottom portion of the first page. Could you tell me, sir, is it possible under your procedures that that could refer to [283] an envelope? A. Yes.

Mr. Collett: Well, if the Court please, I am going to object to that as all irrelevant and immaterial. The thing on the bill that is charged is a particular commodity, which is either an A or a B type of explosive. That is the matter which they are charged with notice of.

The Court: The objection is sustained; the answer will have to go out.

Mr. Russell: Q. Mr. Shepherd, some questions were asked of Mr. Harrison yesterday in which he mentioned the fact that certain payments were accomplished according to his advice through an organization known as Transport Clearings. Can you tell me what is Transport Clearings?

Mr. Collett: Objection, if the Court please; irrelevant and immaterial at this time.

The Court: The objection will be overruled. I want to know myself what it is.

(Testimony of I. W. Shepherd.)

A. Transport Clearings is a corporation that has been organized by numerous motor carriers for the purpose of collecting freight bills, charges on freight bills. We are members and stockholders in Transport Clearings, and on a daily basis we sell——

The Court: Like a clearing house?

The Witness: That's right, Your Honor. [284]

Mr. Russell: That is the explanation.

The Court: What relation has that to the issues?

Mr. Russell: I was about to ask whether or not government bills of lading are submitted for payment through Transport Clearings.

The Witness: They are.

Mr. Collett: Objection, if the Court please; irrelevant.

Mr. Russell: Well, if I might——

The Court: Let the question and answer stand. Let's get through.

Mr. Russell: Q. Do you have—do you receive payment from Transport Clearings prior to the time that the government actually pays?

Mr. Collett: Objection, if the Court please, on the same ground.

Mr. Russell: My only purpose, if the Court please, is that certain of the counts have attempted to prove payment of transportation by showing it received from Transport Clearings, and my purpose here——

Mr. Collett: Well, is there any question that—it has been admitted they were paid for all the

(Testimony of I. W. Shepherd.)

counts. The information is obtained from your own records. There is no question they were not paid for then, is there?

Mr. Russell: I will not press the matter unduly. I don't think it is—— [285]

The Court: It is remote anyway.

Mr. Russell: Q. Mr. Shepherd, just one further question and I would like to ask you, sir, based on your experience for some twelve years in the handling of matters for motor carriers and the experience you related to me and to the Court earlier, do you know what the word—do you know what the word “dangerous explosives” in your certificate means as defined by the Commission?

Mr. Collett: Now, objection, if the Court please. That is a matter that this Court is going to——

The Court: I don't think I will have any difficulty in the interpretation of explosives or dangerous explosives. I am going to be frank with you.

Mr. Russell: Yes.

The Court: I tried to indicate that a day or two ago. Now this witness can't define that any better than the Court itself.

Mr. Russell: I appreciate that. The reason I was raising it, again goes back to my motion that I argued to some extent yesterday, simply that I was trying to develop a point that here was a point where expert minds could differ, and it was one of the things that the Court shouldn't undertake to decide, it should leave that to the Commission.

(Testimony of I. W. Shepherd.)

The Court: You wouldn't have to have any difficulty in making a determination of what dangerous explosives are, would you? [286]

The Witness: Insofar as——

The Court: I mean in relation to your shipping activity.

The Witness: Yes, Your Honor, I would.

The Court: In what respect?

The Witness: In respect of the definition that the Interstate Commerce Commission fails to carry in their regulations.

The Court: Well, they got them in the classifications, haven't they?

The Witness: Well, Your Honor, as I read their classification, they have not defined—they do not currently carry a definition of dangerous explosives as such, as the wording——

The Court: I am going to be frank with you. That is sufficient for the Court.

Mr. Russell: That is all I have. You may inquire, counsel.

Mr. Collett: Just a couple of questions.

Cross-Examination

Mr. Collett: Q. Mr. Shepherd, is there any doubt in your mind as to what trailers should have the placard called for in Section 77823 of Title 49, the Code of Federal Regulations, the placard with the term "explosives" on it?

A. No, there is no doubt in my mind.

Q. No doubt in your mind. Is there any doubt

(Testimony of I. W. Shepherd.)

in your mind as to the trailers that should have the placard with the term "dangerous" on it?

A. No. [287]

Mr. Collett: No further questions, if the Court please.

The Court: Step down.

Mr. Russell: That's all.

(Witness excused.)

Mr. Russell: That concludes the presentation of the defendant. Defendant rests. [288]

* * * * *

The Court: Now what counts are left?

Mr. Collett: 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19 and 20.

The Court: How many is that?

Mr. Collett: Thirteen.

The Court: That's a lucky number now. You will have to go forward and defend your position over in the Circuit Court. What is this, a mandatory fine, or what is it?

Mr. Collett: Maximum fine is \$100 per count, if the Court please, under Section 22.

The Court: And there seems to be nothing for the Court to do but impose that fine.

Mr. Russell: If Your Honor please, I would like respectfully to request a stay of execution for a reasonable period of time in order that we might present the matter.

The Court: What time do you wish?

Mr. Russell: Five days, I think, if the Court please.

The Court: Agreeable?

Mr. Collett: Agreeable, if the Court please.

The Court: Stay of five days. It will go over—I will impose the fine now and put it over until what day, Mr. Clerk?

The Clerk: April 24 for execution. [303]

The Court: Is that agreeable?

Mr. Russell: Yes, and might I understand, so that I am familiar with the procedures of the Court, if we make the remittance to the Clerk in the intervening period, if it will be unnecessary to appear?

The Court: It will be unnecessary to appear.

Mr. Russell: Yes, thank you.

[Endorsed]: Filed May 22, 1952.

[Endorsed]: No. 13,403. United States Court of Appeals for the Ninth Circuit. West Coast Fast Freight, Inc., a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed May 28, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13,403

WEST COAST FAST FREIGHT, INC.,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF APPELLANT'S INTENDED
POINTS ON APPEAL

To the Honorable United States Court of Appeals
for the Ninth Circuit:

The appellant hereby states that the following
are the points upon which the appellant intends to
rely on appeal:

I.

That the judgment as to each of the counts of the
information is contrary to law in that the Court
undertook to make an independent finding of fact as
to the meaning of the words "except dangerous ex-
plosives" as used in the certificate of public con-
venience and necessity issued to the appellant by
the Interstate Commerce Commission contrary to
established rules of law that the primary jurisdic-
tion to define said words is in the Interstate Com-
merce Commission of the United States.

II.

That the Court committed prejudicial error in
holding that the appellant transported dangerous

explosives without there being in force as to the appellant a certificate of public convenience and necessity therefor by reason of the fact that the words "except dangerous explosives" as used in the certificate of public convenience and necessity issued to appellant by the Interstate Commerce Commission are words used in a special and technical sense and the evidence fails to establish that, at the time the alleged transportation was performed, said words had been defined either by statute or by any regulations or decisions of the Interstate Commerce Commission with sufficient certainty to put the appellant on notice of its required conduct with respect to the transportation of explosive articles so that its actions in transporting explosive articles could form the basis of a criminal offense.

III.

That the evidence fails to establish a criminal offense beyond a reasonable doubt as to any of the counts of the information in that the evidence fails to establish that the merchandise allegedly transported by appellant as set forth in the several counts of the information were in fact "dangerous explosives" as those words are used in the certificate of public convenience and necessity issued to the appellant by the Interstate Commerce Commission.

IV.

That the trial court committed prejudicial error by receiving in evidence over the objection of appellant Exhibits 3, 4, 5, 6, 11, 14, 15, 16, 17, 18,

19, 21, and 22, offered by the United States in that:

(a) said exhibits were hearsay as to the appellant;

(b) no proper foundation was laid by any competent evidence for the introduction of said exhibits;

(c) no proper foundation was laid by competent evidence to establish that the appellant had, or should have had, any knowledge of the facts recited in said Exhibits 3, 4, 5, 6, 11, 14, 15, 16, 17, 18, 19, 21, and 22.

V.

That the trial court committed prejudicial error in denying the motion of the appellant to strike from the evidence Exhibits 3, 4, 5, 6, 11, 14, 15, 16, 17, 18, 19, 21, and 22 at the conclusion of the evidence presented by the United States in that:

(a) said exhibits constituted hearsay as to the appellant;

(b) no proper foundation was laid either before or after the receipt of said exhibits by competent evidence for the receipt of said exhibits in evidence;

(c) no foundation was laid either before or after the receipt of said exhibits to establish that the appellant had or should have had knowledge of the facts recited in said Exhibits 3, 4, 5, 6, 11, 14, 15, 16, 17, 18, 19, 21, and 22;

(d) the evidence affirmatively showed at the time of said motion that appellant could not have known the truth or falsity of the facts recited by said exhibits.

VI.

That the judgment of the Court is unsupported by the evidence in that the evidence fails to establish

as a fact that the appellant did physically transport any of the commodities described in counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19, or 20 of the information.

VII.

That the judgment of the Court is unsupported by the evidence in that the evidence fails to establish that any of the commodities described in counts 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17, 19, and 20 of the information were transported willfully and knowingly by appellant even if said commodities were in fact actually transported.

Dated: June 10, 1952.

GLANZ & RUSSELL,
/s/ By THEODORE W. RUSSELL,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 12, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION

To the Honorable United States Court of Appeals
for the Ninth Circuit:

It is hereby stipulated by and between the United States of America, appellee herein, by its attorney Chauncey Tramutolo, United States Attorney for the Northern District of California and West Coast Fast Freight, Inc., appellant herein, by its attorneys Glanz & Russell, by Theodore W. Russell, as follows:

I.

That the parties hereto hereby waive the necessity for printing the exhibits introduced in the within action and agree that the originals of Exhibits 1, 2, 3, 4, 5, 6, 11, 14, 15, 16, 17, 18, 19, 21, 22, 23, and 24 introduced by the United States and Exhibit A introduced by the defendant may be considered by the Court in the determination of the within action on appeal the same as though each of said exhibits had been made a part of the printed record on appeal.

II.

That each of the exhibits described in Paragraph I hereof shall be considered as a part of the record on appeal.

Dated: June 10, 1952.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney for the Northern District
of California, Attorney for Appellee.

GLANZ & RUSSELL,
/s/ By THEODORE W. RUSSELL,
Attorneys for Appellant.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ WILLIAM HEALY,

/s/ WM. E. ORR,

United States Circuit Judges.

[Endorsed]: Filed June 16, 1952. Paul P. O'Brien,
Clerk.